

No. 9506

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

ILENE WARREN alias SPEED WARREN,  
Appellant,

vs.

THE TERRITORY OF HAWAII,  
Appellee.

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Transcript of Record

In Three Volumes

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VOLUME II

Pages 311 to 646

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Upon Appeal from the Supreme Court  
of the Territory of Hawaii

AUG 9 - 1940

PAUL P. O'BRIEN,  
CLERK



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BILLIE FLORENCE PENLAND,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Billie Florence Penland.

Q. Miss Penland, will you speak just a little louder, please, and face in this direction (indicating). We must hear what you say. Where do you live at the present time?

A. 1660 Kapiolani Boulevard.

Q. Who are you living with at that address?

A. My mother.

Q. Do you know a person by the name of Ilene Warren also known as "Speed" Warren?

A. Yes, sir.

Q. How long have you known her?

A. Since the 10th of June last year.

Mr. Dwight: A little bit louder, please.

The Witness: I will try.

Q. Where did you meet her?

A. At the California Hotel.

Q. Were you introduced to her there?

A. Yes, sir.

Q. And that was June? A. June 10th.

Q. Of what year? A. 1937.

Q. 1937? A. Yes, sir. [271]

Q. Is she in the court-room here this morning?

A. Yes, sir.

(Testimony of Billie Florence Penland.)

Q. Where is she?

A. Sitting there (indicating the defendant).

Mr. Young: May the record show the identification?

The Court: Let the record so show.

Q. Do you know where "Speed" Warren lives now?

A. No, I don't; not at the present time.

Q. Did you know where she lived on August 3, 1937?      A. Yes, sir.

Q. Where did she live?

A. Out in Wahiawa.

Q. What place in Wahiawa?

A. I don't know the name of the street.

Q. If you saw a picture of that house that she lived in at that time, would you know it?

A. Yes, sir.

Q. Will you please take a look at Prosecution's Exhibits D, E, F and G in evidence and point out, if you can, the house? (Handing exhibits to the witness.)

A. That is it there (indicating).

Q. How about this Prosecution's Exhibit D, that is a picture of the house? (Referring to exhibit.)

A. Yes.

Q. How do you know that is where Mrs. Warren lived on August 3, 1937?

A. Because I was there at that time. [272]

Mr. Dwight: Just a moment. I don't know whether this witness has been advised of her con-

(Testimony of Billie Florence Penland.)

stitutional rights. I have a little chivalry left, about letting a girl stick her neck in the noose. I have a right to call the Court's attention to it. She doesn't have to go in.

The Court: The Court heard your statements. The witness has a constitutional privilege. At any time you don't want to answer a question on the ground it may tend to incriminate you, that is your privilege. You understand that?

The Witness: Yes, sir.

Mr. Young: You understand that.

Q. Now, Miss Penland, did you live in that house? A. Yes, sir.

Q. How long did you live there?

A. 10th of June to 3rd of August.

Q. What year? A. 1937.

Q. You left on the 10th of August?

A. No, I left on the 3rd of August.

Q. You left there on the 3rd of August. What were you doing in the house of Mrs. Warren?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial; the same objections as the other one.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

(The last question was read.) [273]

A. I was working there.

Q. You were working for Mrs. Warren?

A. Yes, sir.

(Testimony of Billie Florence Penland.)

Q. Was there anyone else living there at that time?

A. There was another girl living there by the name of Marjorie Scott.

Q. Anyone else?           A. No, sir.

Q. Do you know Marjorie Scott if you saw her again?           A. Yes, sir.

Mr. Young: (To the bailiff) Call Marjorie Scott.

(The bailiff brings a woman into the court-room.)

Mr. Dwight: I will admit that is the same Marjorie Scott the witness has identified as Marjorie Scott.

The Court: Let the record so show.

Q. Now, on August 3rd, the last day that you were there, did anything unusual happen while you were in that house?           A. Yes, sir.

Q. Will you please tell this jury just what happened, if you know?

A. Well, we had a raid on the 3rd of August.

Q. What time?

A. That I really can't state. I don't know the exact time.

Q. Was it in the daytime or evening?

A. No, it was in the evening.

Q. Approximately, will you state, to your best recollection, what time it was? [274]

A. It was after 8 o'clock.

Q. What do you know of this whole thing, of your own knowledge, of what happened?



(Testimony of Billie Florence Penland.)

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, unless the question can be made more definite. It is vague.

Mr. Young: Withdraw the question.

Q. Were you working for Mrs. Warren at that time?      A. Yes.

Q. There has been some testimony in this case you admitted an Officer Burns?      A. Yes.

Q. Do you know him?      A. Yes.

Q. Now, Miss Penland, do you know an officer by the name of Burns?      A. Yes, sir.

Q. Will you state whether or not on August 3, 1937, you saw Mr. Burns at Mrs. Warren's place?

A. Yes, sir.

Q. Will you please tell the jury the circumstances that you first saw him there, how you happened to first see him?

A. Well, I had to let him in the door.

Q. Where were you when he was at the door?

A. I was upstairs and Mrs. Warren told me to go downstairs and let him in.

Q. Who was upstairs when you were upstairs?

A. Sergeant Odle and Mrs. Warren.

Q. Sergeant Odle and Mrs. Warren?

A. Yes, sir. [275]

Q. Would you know Sergeant Odle, if you saw him again?      A. Yes, sir.

Mr. Young: (To the bailiff) Call Sergeant Odle, please.

(Testimony of Billie Florence Penland.)

(The bailiff brings a man into the court-room).

Q. Take a look at this gentleman and tell me whether or not this is the man that you saw upstairs?

A. (After looking at the man) Yes, sir.

Mr. Young: What is your name?

A. (By the man identified) Sergeant Odle.

Mr. Young: May the record show the identification of Sergeant Odle.

The Court: The record may so show.

Mr. Dwight: Now, if the Court please, I move to strike this answer as incompetent, irrelevant and immaterial for any purpose whatsoever, having no bearing on the issues here. She testified she permitted Officer Burns to come in downstairs. It is immaterial who was upstairs.

The Court: Objection overruled.

Mr. Dwight. Save an exception.

The Court: Exception noted. Proceed with the direct examination.

Q. You were upstairs and "Speed" Warren was up there and Sergeant Odle, is that correct?

A. Yes, sir.

Q. Was anyone else up there?

A. No, sir.

Q. How did you know there was someone at the front door? [276]

A. There was a knock at the front door and Mrs. Warren looked out the window.

(Testimony of Billie Florence Penland.)

Q. What window did she look out? Can you show us in the documents there? (Referring to papers in the hands of witness)

A. The window right above that garage (indicating on paper).

The Court: What exhibit?

Mr. Young: Exhibit D.

Q. What did she say to you, if anything?

A. "Go downstairs and let him in." She said it was O. K.

Q. You let him in? A. Yes.

Q. What did you, if anything, after that?

A. I said hello to him.

Mr. Dwight: Now, may it please the Court, may I have my objection to this.

The Court: Miss Penland, you are instructed not to relate any conversation on your part not in the presence of Mrs. Warren.

Q. Just tell what you did.

A. I opened the door and let Mr. Burns in.

Q. And did you go any place?

A. Yes, we went to the reception room.

Q. You went to the reception room. Any place else? A. Yes.

Q. Where else did you go?

A. Into another room.

Q. What room is that? How would you describe that [277] room?

A. Well, going in, it would be on the righthand side.

(Testimony of Billie Florence Penland.)

Q. Well, what is it, the kitchen, a living-room or what?      A. No, it is a bedroom.

Mr. Young: Bedroom. May this exhibit be received in evidence? It is marked for identification.

Mr. Dwight: May I have my general objection and exception on the same grounds heretofore?

The Court: Exhibit K for identification will be received in evidence and marked "Exhibit K" in evidence. Exception noted.

(The paper referred to, having previously been marked "Plaintiff's exhibit K for identification," was received in evidence and marked "Plaintiff's exhibit K.")

Q. You went into this room with Officer Burns, this bedroom?      A. Yes.

Q. And after you got into the room, what did he do, if anything?

The Witness: Must I answer that question?

Mr. Young: You want to claim your privilege? Is that what I understand? You don't care to answer that question?

The Witness: No, sir.

Mr. Young: On the ground of your constitutional rights, is that correct?

The Witness: Yes, sir.

Q. Well, how long did you stay in the room?

[278]

A. That I can't say exactly.

Q. Did you leave the room?      A. Yes.

(Testimony of Billie Florence Penland.)

Q. And why did you leave the room?

The Witness: I refuse to answer.

Mr. Young: If you don't care to answer this question, just so state. You refuse to answer that question on your constitutional rights?

The Witness: Yes, sir.

Q. You did leave the room? A. Yes, sir.

Q. While you were in the room did you see "Speed" Warren at any time? A. Yes, sir.

Q. You recall whether or not you heard anything unusual while you were in the room?

A. Yes, sir.

Q. What did you hear? A. A noise.

Q. What kind of a noise?

A. Banging on the door.

Q. Banging on the door. Did you hear anything else? A. No, sir.

Q. Did you hear the officer make any kind of a noise? A. Yes, sir.

Mr. Dwight: Just a moment. Objected to as leading.

Mr. Young: I submit it. [279]

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

Q. What kind of a noise was that?

A. Police whistle.

Q. Now, before this police whistle blew, had anyone else come into the room?

A. No, sir.

(Testimony of Billie Florence Penland.)

Q. After the whistle blew did anyone else come into the room?      A. Yes, sir.

Q. Will you please tell us who came into the room?      A. Mrs. Warren.

Q. And through which door did she come?

A. Through the rear.

Mr. Young: Beg pardon?

A. Rear door.

Q. Rear door. And what did you see her do, if anything, when she came in the room?

The Witness: I refuse to answer.

Mr. Young: You refuse to answer on the ground it might incriminate you?

The Witness: Yes, sir.

Q. Now, after you left the room, did you see Officer Burns again?      A. Yes, sir.

Q. Where did you see him again after you left the room?      A. On the front porch.

Q. Where? [280]

A. On the front porch downstairs.

Q. Is that outside or inside?      A. Inside.

Q. What took place in the front of the house?

A. A little struggling.

Q. Struggling with Officer Burns?

A. Yes, sir.

Q. Did you see "Speed" Warren at any time after you had seen her in the room?

A. Yes, sir.

Q. Where did you see her again?

(Testimony of Billie Florence Penland.)

A. I saw her at the same place Officer Burns was and also upstairs.

Q. You saw her at the same place where Officer Burns was and upstairs. Now, will you tell us briefly—you were struggling with Officer Burns and then what did you do, if anything?

A. I run upstairs.

Q. Did you see what Officer Burns did before you went upstairs?      A. Just the struggling.

Q. Did you see him do anything or was he near "Speed" Warren at any time?      A. Yes.

Q. What did you see the officer and "Speed" Warren do, if anything, while they were on this porch?

A. I just saw him here (indicating), struggling with him. That is all.

Q. Is that all you saw?      A. Yes, sir. [281]

Q. You went upstairs?      A. Yes, sir.

Q. Did you see "Speed" Warren again?

A. Yes, sir.

Q. Upstairs?      A. Yes, sir.

Q. And about how long after you had gone upstairs?      A. About five minutes.

Q. About five minutes. Did you have a conversation with her up there?

A. Not a conversation. I just asked her for some water.

Q. And did she say anything to you?

A. Yes, sir.

Q. What did she say to you at that time?

(Testimony of Billie Florence Penland.)

A. She told me to go in the closet and stay there; there was an officer upstairs.

Q. Did she say anything else?

A. And also that she had pulled the switch.

Q. She told you that upstairs?

A. Yes, sir.

Q. Then what did you do, if anything?

A. I went into the room and get in the closet and stayed there.

Q. Are you sure of that conversation upstairs?

A. Yes, sir.

Q. Did you know what switch she was talking about?      A. Yes, sir.

Q. What switch was that?

A. The one she has downstairs by the door. [282]

Q. Where is that located in the house?

A. It is inside, just at the bottom of the stairs as you go up to the front room.

Q. Is it on your right or left as you come in the front door?      A. On the right.

Q. Where is the switch located, as far as the part of the building is concerned?

A. On the post close to the front door.

Q. On the outside or inside?

A. On the inside.

Q. Of the door, leading up by the steps on the righthand side, is that correct?

A. That is right.

Q. Did she ever tell you anything else about that switch?



(Testimony of Billie Florence Penland.)

A. Well, she told me never to touch it.

Q. Did she tell you why?

A. She said it was charged; it was charged to the door.

Q. It was charged to the door. Did she say anything else in reference to the charge?

A. Well, she said it was about 600 volts.

Q. She said it was about 600 volts? She told you that?      A. Yes.

Q. Do you know of your own personal knowledge whether that was attached up to the door?

A. No.

Q. You do not?      A. No. [283]

Q. Did you ever touch that door?

A. I touched the door but not the switch.

Q. On the night of August 3rd, did you ever touch the door?

A. Just when I let Officer Burns in?

Q. When you let Officer Burns in?

A. Yes.

Q. Did you touch it after that?

A. Not after; I touched it a couple of times before that.

Q. Did you ever touch that switch?

A. No, sir.

Mr. Young: May I have just a moment, your Honor?

Q. Did "Speed" ever tell you, if you recall, what that switch was for?      A. Yes, sir.

Q. What did she say?

(Testimony of Billie Florence Penland.)

A. She said it was put there to keep the drunks away.

Q. Anything else?

A. Well, she also stated that she used that in case of a raid.

Q. When did she tell you this?

A. I can't remember the exact date.

Q. Do you know of your own knowledge, Miss Penland, whether or not you can see from the window above the garage down to the front door from upstairs?

A. Yes, sir.

Q. The window that you say "Speed" Warren looked out?

A. Yes, sir. [284]

Q. Have you ever looked out of that window?

A. Yes.

Q. You can see who is outside the front door?

A. Yes.

The Court: The answer was yes.

Q. Do you know whether or not, of your own knowledge, there was any light burning on the outside of the door when you let Officer Burns in?

A. Yes, sir.

Q. Where is that light located?

A. Above the door, outside.

Q. You think you can indicate about where on that picture D, Prosecution's Exhibit D?

A. (Indicating).

Mr. Young: Indicating just above the door.

Q. You discussed this case with me in my office, Miss Penland?

A. Yes, sir.

(Testimony of Billie Florence Penland.)

Q. Everything you have testified here is the truth?      A. Yes, sir.

Mr. Young: Your witness. I think it is about twelve now, your Honor. If counsel wants to cross-examine her—

Mr. Dwight: No, it is quitting time.

The Court: For the reasons stated to me and on the motion made by Mr. Dwight, a continuance is granted and the case continued until nine o'clock tomorrow morning with the understanding it will continue all day. The jury is under the same instructions. Court will adjourn until tomorrow morning at nine o'clock.

(A recess was taken until Thursday, February 10, 1938, at nine o'clock a. m.) [285]

### CERTIFICATE OF REPORTER

I Hereby Certify that the foregoing, consisting of Volume I, Part I, pages number 1 to 285, inclusive, and the following, consisting of Volume I, Part II, pages number 286 to 598, inclusive, to be a full, true and correct transcript of my shorthand notes in the above-entitled matter.

Dated: Honolulu, T. H., May 27, 1938.

GEORGE R. CLARK

Official Shorthand Reporter,  
Circuit Court, 1st Circuit,  
Territory of Hawaii

[Endorsed]: Filed Aug. 1, 1938. [285A]

Honolulu, T. H., Feb. 9, 1938.

(The trial was resumed at 9:04 a. m.)

### Further Trial by Jury

(At the hour of 9:04 a. m., both counsel being present, and the jurors all being present, the following further proceedings were had and testimony given:)

The Clerk: Criminal 14,332 Territory of Hawaii against Ilene Warren alias "Speed" Warren.

Mr. Dwight: Ready for the defendant. We are willing to stipulate the defendant and the jury are present.

Mr. Young: Ready for the Territory. So stipulated.

The Court: Let the record so show,—ready for both sides. Proceed.

Mr. Young: Miss Penland.

The Bailiff (Mr. Cabral): Three calls, no answer.

Mr. Young: Let the record show this witness was ordered to return here at 9 o'clock a. m. today.

Mr. Dwight: I will ask that a bench warrant issue.

Mr. Young: I will join in that motion.

The Court: Bench warrant will issue returnable forthwith for witness Miss Billie Penland.

Mr. Dwight: And I also give notice that in the event she is not produced, I intend to file a motion to strike her testimony and a motion that a mistrial be entered forthwith. [286]

The Court: Proceed with other testimony.

Mr. Young: If your Honor please, at this time the Territory desires to offer into evidence a certain portion of the record in this case, and counsel and I have had some discussion as to the propriety of offering that as evidence. It is a portion of the affidavit filed in this Court by the defendant.

Mr. Dwight: May I suggest, if the Court please, if any offer is to be made, that the offer be made in the absence of the jury. It might be a good idea for the jury to take a recess and I hope we can locate this recalcitrant witness.

The Court: The jury will be excused from the court-room pending the offer of proof by Mr. Young. You may be excused and remain outside of the court-room.

(The jury retired from the court-room)

Mr. Young: If your Honor please, the Territory desires to read in evidence that portion of the affidavit filed in this Court by the defendant in support of her motion to suppress the evidence and to read that portion of the affidavit which states that the defendant was in legal possession and actual possession of the premises, certain premises at Muliwai Street, Wahiawa, City and County of Honolulu, being the premises involved in this case.

Mr. Dwight: I most respectfully object to the offer upon the ground that it is incompetent, [287] irrelevant and immaterial, and that any statements made in any affidavit or testimony given by the defendant upon a motion to suppress is incompetent, irrelevant and immaterial for any purposes

in the main trial. I am perfectly willing to submit authorities. I do know that the Ninth Circuit Court of Appeals way back—I think it was in 1921 or 1922—did hold that statements made in an affidavit upon a motion to suppress was admissible. Since that time the Supreme Court has overruled that. If the Court will excuse me, I will get that. I think it is the Liebowitz case or the Taylor case. Both of those cases came from the Ninth Circuit.

The Court: The Court will grant you that. Bring them in chambers. The Court takes a short recess.

(A recess was taken at 9:10 a. m. and at 9:30 a. m. the Court reconvened.)

Mr. Young: If the Court please, in view of the fact that this witness is now here, we can take up that other matter later. (Objection sustained; see Tr. p. 351).

The Court: The offer of proof will be continued until another time. Will you take the stand, Miss Penland. You understood you were to be here at 9 o'clock?

The Witness: I missed my bus.

The Court: That is the only reason?

The Witness: Yes. [288]

The Court: The Court will withdraw the bench warrant and not take any action. Your explanation is satisfactory to the Court.

BILLIE FLORENCE PENLAND,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Resumed)

By Mr. Young:

Q. Miss Penland, are you acquainted with the downstairs floor plan of "Speed" Warren's house?

A. No, sir, not quite.

Q. Are you acquainted with the floor plan, how the rooms are located downstairs?

A. Well, I can explain the best I can.

Mr. Young: Just speak a little louder and face this way (indicating).

A. Well, I can explain to the best of my knowledge how the rooms are.

Q. Will you explain that, please? Just what rooms are downstairs?

A. Well, there is two rooms. You go into the reception room, then there is a hallway like, shower room and bath, another room, sort of a laundry room; right off the room is another bedroom and further down the hall, close to the back door, is another room, bedroom.

Q. Miss Penland, will you step down here a moment, please? Take this pointer here (handing to witness). Now, referring to Prosecution's Exhibit K in evidence, which is part of the plan—

Mr. Dwight: Never mind referring to it. [289]

(Witness steps down from the stand to the blackboard)

(Testimony of Billie Florence Penland.)

Q. (Continuing) Can you point out the room there that you went to?

The Court: Just a minute. What exhibit is that?

Mr. Young: Exhibit K in evidence.

Q. Will you point out the room that you went to with Officer Burns? I will explain. This is the front door (indicating), the stairs on the right-hand side as you go in (indicating); this is the stairs going up to the kitchen (indicating); this is the living room (indicating).

A. Here, this room (indicating on Exhibit K.)

Mr. Dwight: You mark a cross where the bedroom is.

(The witness marks a cross)

Q. This is the front hallway when you come in (indicating on Exhibit K); this is Muliwai Street up here (indicating); you come in this hallway (indicating), then the stairs go this way upstairs (indicating). You understand that? Then the other stairs go up here (indicating). This is the living room (indicating). Now, where are the bedrooms in that house?

A. Supposed to be along about here (indicating on Exhibit K).

Mr. Young: Along there.

Mr. Dwight: Indicating a section of the plan to the left, witness drawing a line down. Where did you start the bedrooms?

(The witness indicates)



(Testimony of Billie Florence Penland.)

Mr. Dwight: A couple of inches below the top line.

Q. How many bedrooms are there? [290]

A. Four.

Q. Four bedrooms on the bottom floor?

A. Yes.

Mr. Young: Take the stand. (The witness resumes the stand)

Q. Now, the bedroom that you went into with Officer Burns, how many doors are on that bedroom? A. Two.

Q. Where were the doors located with respect to the walls?

A. One door is in the middle of the bedroom and one in the rear, just about in the middle.

Q. You talk about a rear door. Was there a front door to the bedroom? A. Yes.

Q. Into what room did the door lead?

Mr. Dwight: You are talking about upstairs.

Mr. Young: No, the door of the room that she went into with Burns, the door.

A. It leads through that bedroom, then you can go out through the back door to the hallway.

Q. The front door to the bedroom?

A. Yes.

Q. When you went through the front door, where did you come out?

A. The back door of that same bedroom.

Q. Now, with respect to that rear door of the bedroom, when you went out of that, where did you come out? A. Came out in the hallway.

(Testimony of Billie Florence Penland.)

Q. Which hallway? [291]

A. In the back, that leads clean around to the front room.

Q. You are talking about upstairs or downstairs?

A. No, downstairs.

Mr. Young: No further questions.

### Cross Examination

By Mr. Dwight:

Q. You mean when you come out of the parlor and go into the bedroom, what door do you go into?

A. The front door.

Q. The front door. When you come out of that room, what door do you come out?

A. The back door.

Q. You went around the back way. You didn't go through the parlor off the road?

A. Then I came out the front door. Before that I used the rear door.

Q. Now, Miss Penland, your name is Florence Woytenko?      A. Yes.

Q. How do you spell that?

A. My maiden name is W-o-y-t-e-n-k-o, Woytenko.

Q. Are you an alien or a citizen?

A. Citizen.

Q. Were you born in the United States?

A. I was born here.

Q. Now, Miss Penland, you stated on direct examination that you went out to Wahiawa on the

(Testimony of Billie Florence Penland.)

10th of June and you stayed there until the 3rd of August. Do you recall that? A. Yes, sir.

[292]

Q. You also testified that during that period you were working for Mrs. Warren?

A. Yes, sir.

Q. What do you mean by that expression, "working for Mrs. Warren"?

A. As a prostitute.

Q. You were a prostitute? A. Yes, sir.

Q. By the way, have you ever been convicted of prostitution? A. No, sir.

Q. Of any other crime? A. Yes, sir.

Q. When were you convicted?

A. I was up for fighting last year. I don't remember the exact date.

Q. How many times have you been convicted?

A. About three or four; I am not sure.

Q. Now, Miss Penland, when you say you were engaged in prostitution from the 10th day of June to the 3rd day of August, do you mean that you were having intercourse with men during that time?

A. Yes, sir.

Q. You were examined, were you not, on the 10th of June? A. Yes, sir.

Q. Do you care to divulge the result of that examination?

Mr. Young: I object to this as being incompetent, irrelevant and immaterial, based on hearsay and not proper cross examination. [293]

(Testimony of Billie Florence Penland.)

Q. You waive the privileged communication between you and your doctor?

(There was no answer.)

The Court: The objection is it is hearsay?

Mr. Young: I object on the ground it is incompetent, irrelevant and immaterial; it is not proper cross examination and that her information is based upon hearsay and for the further ground it is a privileged communication, and counsel, if I recall, was one of the ones insisting upon not laying bare the life of this type of witness.

Mr. Dwight: May it please the Court, if the Court will recall my question, I asked this witness if she would care to divulge the result of that examination and I was careful to give her the privilege. I submit she has waived that.

The Court: Objection overruled. Answer the question.

A. No, sir.

Q. You refuse to divulge that information?

A. Yes, sir.

Q. Were you examined by a doctor?

A. Yes, sir.

Q. On the 10th of June?           A. Yes, sir.

Q. Were you examined by the doctor on the 12th of June?           A. That I don't remember.

Q. Were you examined by the doctor on the 13th of June? [294]

A. I have not kept track of the dates.

Q. Were you examined by the doctor up to and including the end of July?           A. Yes, sir.

(Testimony of Billie Florence Penland.)

Q. And from June 3rd to the end of July were you practicing prostitution in Mrs. Warren's house?

A. Yes, sir.

Q. Did you turn in any medical reports to Mrs. Warren?

A. Yes, sir.

Q. And you gave it to Mrs. Warren?

A. Yes, sir.

Q. Were those reports negative or positive?

A. They were all negative.

Q. Every one of them?

A. Yes, sir.

Q. The Wasserman test?

A. Yes, sir.

Q. You deny that you were taking treatment for a venereal disease from the 12th of June until the 1st of August?

Mr. Young: If your Honor please, I object to this line of questioning as being incompetent, irrelevant and immaterial. What difference does it make whether this witness had a venereal disease or not. It is attempting to put into the record matter not properly belonging here.

Mr. Dwight: It is very material. The police will tell who can operate and a person with venereal disease cannot operate. She has testified she [295] operated.

The Court: The Court will allow you to ask the question.

(The last question was read.)

A. Yes, I did take treatments but I was not working during that period.

Q. You were not engaged in prostitution during that period?

A. No.

(Testimony of Billie Florence Penland.)

Q. Then your statement that you were engaged in acts of prostitution from June 10th until August 4th, is not the truth?      A. That is right.

Q. You knew it was not the truth when you so testified?      A. Yes.

Q. You deliberately intended to mislead this jury?      A. No, sir.

Q. Why did you make that statement when you knew it was false?      A. I am slightly nervous.

Q. You are slightly nervous, that is why you made that statement?      A. Yes.

Q. Don't you suffer with hallucinations?

A. I don't know what you mean.

Q. You have funny ideas about what is said to you or what is done to you?      A. No, sir.

Q. Do you recall telephoning my office one day [296] telling me that somebody was out there to shoot you?      A. No, sir, I didn't telephone.

Q. What date was that you were in my office?

A. I don't remember.

Q. You don't remember. When did you first come to my office?

A. I don't remember the date.

Q. Sometime after the raid, wasn't it?

A. I believe it was the first day that I was let out of the police station.

Q. Oh, you were taken down to the police station?      A. Yes, sir.

Q. How many days were you held?

A. I believe it is 48 hours; I am not positive.

(Testimony of Billie Florence Penland.)

Q. And while you were held down at the police station did they show you any wire, equipment, transformers and things like that?

A. Yes, sir.

Q. And they began to pump you?

A. Yes, sir.

Q. And you never talked until they showed you those things?

A. Well, I didn't intend to tell the truth for a while. Mrs. Warren had been very good to me, so I did want to protect her to a certain extent.

Q. So you did not say anything to the police until they flashed the electric wire, transformers and door?      A. Yes.

Q. And then they compelled you to tell them what you knew about that door, is that correct?

[297]

A. Yes.

Q. How many times did you make a statement to the police?

A. I believe I made two statements with Captain Hays and once with someone else—I don't know who it is—with the police. I made three statements.

Q. You made three statements?      A. Yes.

Q. The first one while you were locked up to Captain Hays?      A. Yes.

Q. When did you make the next statement?

A. The following day.

Q. When did you make your third statement?

A. I am not sure whether there is.

(Testimony of Billie Florence Penland.)

Q. When did you make the statement to the police, if you ever did, that Mrs. Warren told you that she pulled the switch? Is that the second statement or the third statement?

A. The second statement.

Q. You had been to my office before you made that second statement, hadn't you?

A. No, sir, I didn't go to your office until after I was released.

Q. But the second statement was made while you were in the police station?

A. While I was in the police station. All statements were made while I was in the police station.

Q. You recall coming to my office making a demand for some money that was in the money box?

[298]

A. Yes, sir.

Q. Your demands were rather strenuous, weren't they?

A. Well, I had to have the money; I had no place to live.

Q. Who took the money?

A. I don't know.

Q. It was done when the police were in the house?

A. Yes, sir.

Q. You went back with the police after the thing was all over to try to find the money and it wasn't there?

A. Yes, sir.

Q. That house was locked up by the police?

A. Yes.



(Testimony of Billie Florence Penland.)

Q. You know that?           A. Yes, sir.

Q. The police had the keys all the time?

A. Yes.

Q. When you went back there you found there was no money in the money box?           A. Yes, sir.

Q. And you knew that to be a fact?

A. Yes, sir.

Q. You made demand upon Mrs. Warren for that money?

A. I didn't demand of her; I demanded of you.

Q. You made demand on me?           A. Yes.

Q. You told me in a rather threatening manner and language that money would have to be produced by Mrs. Warren?           A. Yes, sir. [299]

Q. In my presence you heard me telephone when you were in there?           A. Yes, sir.

Q. To whom did I telephone?

A. I believe it was the police station.

Q. You knew it was to Mr. Kelley and the police station?           A. I believe so.

Q. How many times did you come into my office?

A. I think I was there twice. You were in about twice and you weren't in.

Q. Let me refresh your memory. On August 7, 1937, you came into my office. That would be about three days after?

Mr. Young: I object to counsel telling the witness what was done by way of argument. I submit we stick to questions on the statements of the witness.

(Testimony of Billie Florence Penland.)

Q. You recall visiting my office on August 7th, four days after this incident?      A. Yes, sir.

Q. And you came in company with another girl?

A. Yes, sir.

Q. That girl was Marjorie Scott?

A. Yes, sir.

Q. At that time you came in regarding the money that was in the money box, isn't that correct?

A. Yes.

Q. At that time, Miss Penland, did you tell me that you knew nothing of the incident of the death of [300] this police officer?

A. Yes, sir, I didn't know a thing about it for about—after Mrs. Warren was taken I was in the house for about an hour and a half. When the police came back they told me there was a murder committed but I did not know it before that.

Q. It was an hour and a half after?

A. It was an hour and a half after or so.

Q. That you first knew that someone had died?

A. Yes, sir.

Q. And Mrs. Warren wasn't anywhere near the place?      A. No, sir.

Q. You told me that definitely?

A. Yes, sir.

Q. I told you you needn't answer any questions, didn't I?      A. Yes.

Q. You came in on August 11, 1937?

A. I believe I did.

(Testimony of Billie Florence Penland.)

Q. You didn't come in with Miss Scott that time; you came in with another woman?

A. I went up there with my mother.

Q. You came in with this other lady?

A. Yes.

Q. And you again made demand upon me for the money?      A. Yes, sir.

Q. Did you tell me then that money would have to be produced or you would know the reason why?

A. I think I made a statement similar to that.

Q. Then you came in again on August 13, 1937, this [301] time by yourself. Do you recall that?

A. Yes.

Q. And you again made this demand that if Mrs. Warren didn't give you the money, you would know the reason why?      A. Yes, sir.

Q. Then I told you to go and lodge that complaint with the police, isn't that correct?

A. Yes, sir.

Q. And you never came into my office again, isn't that correct?      A. Yes, sir.

Q. Now, I want to ask you, Miss Penland, if it was after the 13th of August that you went down there and told them that "Speed" pulled the switch, that "Speed" told you she pulled the switch?

A. The first time I made that statement was to Mr. MacFarland. I don't know the date it was.

Q. Mr. MacFarland was involved in another matter and that came a long time subsequent to this investigation?      A. That I don't know.

(Testimony of Billie Florence Penland.)

Q. You don't know. Didn't you give Mr. MacFarland some information, the result of your information being an indictment against Mrs. Warren for another offense in the Federal Court?

Mr. Young: If your Honor please, I object to this. I don't know how far we should go.

Mr. Dwight: I am going to show her interest in making this statement. [302]

Mr. Young: I don't see that it is relevant in this case.

The Court: Objection overruled.

Mr. Dwight: Will you answer the question?

A. I don't quite remember making any other statement outside of that one about the switch.

Q. That statement about the switch was contained in your statement to Mr. MacFarland, isn't that right?      A. Yes.

Q. Mr. MacFarland has no connection with local police?      A. That I don't know.

Q. Do you know Sam Odle?

A. I don't know. I just met him out there.

Q. Haven't you been in company with him continually since the incident?

A. Just once in 'court and I seen him once in town.

Q. Didn't he come out once to your house on a drinking party and you called the police?

A. Yes, because he started getting loud.

Q. And he was sitting down on his seat doing nothing when you told him?

(Testimony of Billie Florence Penland.)

A. I asked him in a nice way to leave. He started getting nasty, talking loud.

Q. All right. Did you discuss this case with Mr. Odle?

A. No, sir, a very few words were said to him.

Q. You have been meeting him in town at a beer parlor, having drinks with Odle?

A. I met him one day at the house and met him once [303] after that. I asked him to please leave, as it was getting late. He didn't want to go; he had a friend with him.

Q. Do you know Peggy Miller?

A. I don't know her but I have heard of her.

Q. Did you talk to her about this case?

A. No, sir.

Q. Did you talk to her about what you were going to do with "Speed"? A. No, sir.

Q. Do you deny making this statement to Peggy Miller— A. (Interrupting) Yes, sir.

Mr. Dwight: Let me give you the statement.

Q. (Continuing) —that if that money isn't paid by "Speed", "I am going in and hang 'Speed' higher than a kite?" A. No, sir.

Q. You deny making that statement to Peggy Miller? A. Yes, sir.

Q. Do you know a girl by the name of Sally?

A. Yes, sir.

Q. Did you make a similar statement to this girl Sally, that you were going to hang "Speed"?

A. No, sir.

Q. You deny making that statement?

(Testimony of Billie Florence Penland.)

A. Yes, sir.

Q. You deny telephoning me and telling me that Mrs. Warren and her gang were down there trying to shoot you, trying to beat you up?

A. Yes, I do deny that. [304]

Q. You deny telephoning me to that effect?

A. I had prowlers around the house.

Q. Didn't you telephone me?

A. Not to my recollection; no.

Q. You don't recall that?           A. No.

Q. Do you recall on another occasion telephoning to the police that Mrs. Warren was out there to shoot you, and the police went out, you had a fountain pen poking on your breast bone?

A. I had no fountain pen; I had a pin stuck back there.

Q. It might have been accidental, you would be afraid?           A. Yes, sir.

Q. Didn't you telephone and say it was Mrs. Warren?

A. I didn't say it was Mrs. Warren. I did not accuse anybody.

Q. Have you had mental trouble in this respect?

A. No, sir.

Q. Have you ever had siphilis?

A. No, sir.

Q. You are sure about that?

A. Well, the doctor told me that I had a shanker.

Q. What else did he tell you? You don't have to answer if you don't want to.

A. That is all he told me.

(Testimony of Billie Florence Penland.)

Q. Do you recall one time, Miss Penland, rather recently, when, for no reason at all, you jumped out of a taxicab on Hotel Street?

A. I had a reason for that. [305]

Q. What is that?

A. I had a reason for that.

Q. You had a reason for that?

A. Yes, I was afraid of that cab driven, the statement he made to me.

Q. Do you have hallucinations of fear? You get afraid every once in a while.

A. No, not exactly.

Q. You rode—you were on Hotel Street when that happened, right up there by the Young Hotel, is that right?

A. It was in front of the Central Y. M. C. A.

Q. It was in front of the Central Y. M. C. A., good, old Puritanical establishment, well lighted.

A. Yes.

Q. You jumped out of the car because you didn't like the statement that the taxi driver had made, is that right?

A. Yes, sir.

Q. Now, Miss Penland, while you were in the room—I am speaking now of the back room—and when Mr. Burns was in there, did Mr. Burns lay his hands on you?

A. Yes, he did grab me; yes, threw me across the bed.

Q. Did he lay his hands on Mrs. Warren?

A. Yes, sir.

Q. What did he do to Mrs. Warren?

(Testimony of Billie Florence Penland.)

A. He was struggling with her.

Q. What was he doing, if you were able to see?

A. I seen him holding her arms.

Q. What else?

A. That is all I saw, and I was trying to get away myself. [306]

Q. You got away?

A. Yes, sir, as far as the front portion. I was caught again and I broke loose again.

Q. And did you look back and see who was following you?      A. No, sir.

Q. Was Mrs. Warren right back of you, fighting with Burns?

A. Yes, sir, Mrs. Warren was fighting with him. There was fighting all the way out to this door; yes, sir.

Q. And the three of you again met at the front parlor?      A. Front porch, yes.

Q. The three of you continuing in a fight, all pulling and pushing and trying to get away, isn't that right?      A. Yes, sir.

Q. Then you got away and ran upstairs?

A. Yes, sir.

Q. And what stairway did you go up?

A. The rear one that leads to the kitchen.

Q. You went up the back stairway?

A. Yes, sir.

Q. And that is all you know about what happened?      A. Yes, sir.

Q. You were busy fighting and you saw yourself



(Testimony of Billie Florence Penland.)

and Mrs. Warren and Burns fighting from that back room to the front room?

A. From my bedroom to the front porch. [307]

Q. And then you got away and you went upstairs? A. Yes, sir.

Q. And what room did you go into when you went upstairs?

A. It is the—as you come up from the kitchen, it is on the righthand side alongside of the bath room.

Q. Did you see Mrs. Warren come up the front steps?

A. I did not see her come up the front steps but I heard her. I was in my room.

Q. Did you look out into the front room?

A. Yes, sir.

Q. Did you see a tall Chinese officer standing there with Mrs. Warren? A. Yes, sir.

Q. There was a police officer standing there all the time with Mrs. Warren? A. Yes, sir.

Q. You saw this man with Mrs. Warren when she came upstairs? A. Yes, sir.

Q. You say you asked her for a glass of water?

A. Yes, sir.

Q. She said, "Get into that closet" or "Stay out of sight", something like that, isn't that correct?

A. Yes, sir.

Q. Now, when did she tell you that she pulled the switch?

A. Here's the exact words she said:—I asked

(Testimony of Billie Florence Penland.)

her for a drink of water—"Get in there and hide; there is a police officer here so I pulled the switch."

[308]

Q. Then she finished and concluded her statement by saying, "I pulled the switch?"

A. Yes, sir.

Q. You didn't know anything about somebody being bitten by electricity for an hour and a half?

A. I didn't know there was someone killed; no, because she told me if she does pull the switch, she just wants to frighten them away from the door; that is what I thought she done.

Q. Not only was the police officer there but there was another man standing right there, wasn't there, when this alleged statement was supposed to have been made?      A. Sergeant Odle.

Q. Sergeant Odle?      A. Yes, sir.

Mr. Dwight: Your witness.

### Redirect Examination

By Mr. Young:

Q. Miss Penland, what is Sally's last name, if you know?      A. I don't know.

Q. Can you describe what type of person she is, where she works?

A. The last time I seen Sally she was at the California Hotel.

Q. What room there, do you know?

A. I don't know.

Q. How long ago was that?

(Testimony of Billie Florence Penland.)

A. I believe she was living then in the rear of [309] that hotel, sort of cottages like, I am here in the restaurant (demonstrating).

Q. Was she blonde or brunette at the time you saw her at the California?

A. She was blonde and I seen her on the street, she had changed to brown hair.

Q. About how old a person is she?

A. I don't think she is over 20.

Q. Now, everything that you have testified here this morning, is that based on your memory of what happened that night? A. Yes, sir.

Q. I understand from your cross examination you were a bit hesitant down the police station to testify or give a statement about "Speed" Warren because she had been good to you and you wanted to protect her? A. Yes, sir.

Q. You finally gave a statement? A. Yes.

Q. Is that statement the truth?

A. Yes, sir.

Q. Based upon your memory of what happened that night? A. Yes, sir.

Q. There has been some testimony about certain money in the possession of "Speed" Warren and Mr. Dwight, her attorney.

Mr. Dwight: That is not the statement,—the police swiped it.

Q. What kind of money is it? [310]

A. The money I earned at—

Q. Doing what? A. In prostitution.

(Testimony of Billie Florence Penland.)

Q. That was for that period that you lived there? A. Yes, sir.

Q. How much money did she have of yours?

A. She had over \$50.00 I gave her for safe-keeping.

Q. That was money you had earned from prostitution? A. Yes, sir.

Q. Now, when this statement was made upstairs about Mrs. Warren saying something about the police and that she had pulled the switch, did she say that to you alone? Were you the only one that could hear that or was someone else around?

A. I was the only one that could hear it.

Q. When did she say that to you, what part of the house?

Mr. Dwight: I am going to move to strike that answer that she was the only one that could hear it.

The Court: Motion granted; stricken on the ground it is a conclusion of the witness.

Q. In what part of the house?

A. Close to the door going into my bedroom.

Q. Where were these other people at that time?

A. One was standing by the settee, Mr. Odle was standing by the settee; the police officer was just about the center of the room.

Q. About how far were they from you and Mrs. Warren? Can you point out some object in here?

[311]

A. Mr. Odle would be about the corner of that door (indicating).

(Testimony of Billie Florence Penland.)

Q. Mr. Odle would be about the corner of that door?      A. Yes, sir.

The Court: Where?

Mr. Young: The blackboard here (indicating).

The Court: The corner of that blackboard to where you are sitting?      A. Yes, sir.

Mr. Young: About 20 feet, Mr. Dwight?

Mr. Dwight: I think so.

Q. Could you see Odle at that time when she was saying that to you?

A. I seen him before that.

Q. Before that?      A. Yes, sir.

Q. Were either of those two men in your sight when she spoke those words to you about the switch?

A. No, sir, because I was standing inside the door. I looked out; I seen Odle was out there and a Chinese, went back into my room, went and asked her for a drink of water; she told me in a low voice a little bit above a whisper.

Q. And that is when she told you about the switch?      A. Yes, sir.

A. You testified you were struggling in the room to get away from Burns?      A. Yes, sir.

Q. When you finally got away, you ran across the room, the parlor? [312]      A. Yes, sir.

Q. When did you see—while you were running across there, when did you see that struggling or fighting in the parlor?

A. I didn't see that struggling in the parlor but I heard Burns and Mrs. Warren struggling.

Q. You were facing the other way?

(Testimony of Billie Florence Penland.)

A. Yes, sir.

Q. You heard some noise behind you, that is right?      A. Yes.

Q. When was the next time you saw Mrs. Warren after you left the room?

Mr. Dwight: I object to that as improper redirect. That matter was exhausted on direct; incompetent, irrelevant and immaterial for that reason.

The Court: Objection sustained.

(The last question was read.)

The Court: I withdraw that ruling and allow the question to be answered.

Mr. Dwight: I will refer to the record. I except upon the ground that the evidence directly shows that the identical question was asked on direct examination of this witness and the record shows her answer thereto.

The Court: The Court appreciates that. Let the record so show. It is overruled.

Q. Where was she after she left the bedroom?

A. On the front porch. [313]

Q. Was she nearer to you or closer to Burns?

A. Closer to Burns than she was to me.

Q. She was closer to Burns?      A. Yes, sir.

Q. Now, the door that you came out, do you call that the front door or the back door?

A. That is the front door.

Q. That leads to the parlor?      A. Yes, sir.

Q. The rear door, with reference to that, leads to—      A. Into the hallway.

(Testimony of Billie Florence Penland.)

Q. Can you go—if you go out the rear door of that bedroom, can you go to the front of the house without going through the bedroom?

A. Yes, sir.

Q. How do you get to the front of the house?

A. There is a hallway leads clean around the front.

Q. That is all on the bottom floor?

A. Yes, sir.

Q. Everything you have testified here is the truth?

A. Yes, sir.

Mr. Young: No further questions.

#### Recross Examination

By Mr. Dwight:

Q. Miss Penland, only one more question. On or about the 30th day of July, did you file a certificate with Mrs. Warren from another doctor?

A. Yes, sir.

Q. To the effect that your condition had been cleaned up? [314]

A. Yes, sir.

Q. And was it not after that date?

A. I don't remember the dates.

Q. Wasn't it after you had filed that certificate, that is when you started to practice prostitution, as you have testified to on direct examination, isn't that right?

A. Sure.

Mr. Dwight: No further questions.

Mr. Young: That is all.

(Testimony of Billie Florence Penland.)

By the Court:

Q. May I ask just one question? Miss Penland, you have testified at the time Mrs. Warren made the statement to you upstairs that Sergeant Odle was near the corner of that blackboard, about 20 feet away from you.

A. That is right.

Q. Where was that Chinese-looking officer? How far away was he?

A. Just a few feet from Sergeant Odle.

Q. Was he nearer or further away?

A. The officer was closer to Mrs. Warren than Sergeant Odle.

#### Re-redirect Examination

By Mr. Young:

Q. May I ask one more question? Was Mrs. Warren facing you or facing the other man when she spoke?

A. Towards me.

Mr. Young: No further questions.

Mr. Dwight: I have no further questions. I am going to ask the Court to instruct this witness to [315] refrain from discussing her testimony with Sergeant Odle or any other person connected with the prosecution.

Mr. Young: I don't know whether the Court should instruct the witness.

The Court: The Court will so instruct you not to discuss your evidence with anyone, especially with Sergeant Odle, or any witness that may be excused in this case.



Mr. Dwight: At this time I move to strike the testimony of this witness upon the ground that it is incompetent, irrelevant and immaterial. The evidence was produced and obtained in violation of the defendant's rights under the Fourth Amendment and Fifth Amendment of the Constitution; upon the further ground that the witness herself has admitted that she committed perjury and that this Court only recently—rather, our Supreme Court has held that any person who commits perjury is incompetent to testify.

Mr. Young: I don't recall any such admission by this witness.

Mr. Dwight: I refer to the record. I asked her if she came in here and deliberately lied.

Mr. Young: Just a minute. Counsel has no right to call this witness a perjurer.

Mr. Dwight: Just a minute. I take it for granted that counsel's questions are based on facts that are material. The Public Prosecutor did ask questions that were very material and [316] vital to the issue here. That witness deliberately made a false statement in regard to a material fact, and if that is a fact, that is perjury.

The Court: The Court reprimands you for using that word and denies the motion to strike and asks the jury to disregard it.

Mr. Dwight: May I except to the Court's remarks and ask that a mistrial be entered, as the remarks are prejudicial to the defendant?

The Court: The motion is denied. Before the next witness is called, the Court will declare a recess.

(A brief recess was taken.)

Mr. Dwight: May it please the Court, I would like the record to show my exception to the remarks of the Court as being prejudicial. I assign the same error and I now move a mistrial be entered.

The Court: Motion denied.

Mr. Dwight: Save an exception.

The Court: Exception granted.

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MARJORIE SCOTT,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name?

A. Marjorie Scott.

Q. You live in Honolulu? [317]                   A. Yes.

Q. How long have you lived here?

A. Since June.

Q. Do you know a person by the name of "Speed" Warren?                   A. Yes, sir.

Q. Is she in the courtroom this morning?

A. Yes, the lady sitting there in grey (indicating the defendant).

Mr. Young: Let the record so show.

(Testimony of Marjorie Scott.)

The Court: Let the record so show.

Mr. Young: Miss Scott, we will all appreciate if you will speak a little louder; just a little louder, please.

Q. How did you happen to know "Speed" Warren? When did you met her?

A. I Met her in town. I was sitting in a cafe, eating with a friend of mine. Mrs. Warren walked in and was introduced to me in the cafe.

Q. And did you meet her then?

A. Yes, sir, this friend introduced her to me.

Q. Do you know where she lives?

A. Yes, sir, I do.

Q. Did you know where she lived on August 3, 1937?

A. Yes, sir, I do.

Q. Where did she live at that time?

A. At Wahiawa.

Q. Now, Miss Scott, will you please speak up a little louder, please?

A. She lives in Wahiawa.

Q. What place in Wahiawa? [318]

A. But I don't know the correct address of the place.

Q. Would you know a picture of the house if you saw it again?

A. Yes, sir, I would.

Q. Miss Scott, will you please look at these pictures on the board, Prosecution's Exhibits "D", "E", "F" and "G" in evidence? (Indicating)

A. (Examining same) Yes, sir, that is her house.

(Testimony of Marjorie Scott.)

Q. Is that the house that "Speed" Warren lived in on August 3, 1937?      A. Yes.

Q. Have you ever been in that house?

A. Yes, sir, I have.

Q. When were you in that house?

A. While I was rooming with Mrs. Warren from June until—Well, I was there in August and I moved out.

Q. Of what year?      A. Last year, 1937.

Q. June until August?

A. I moved out on the 4th of August.

Q. On the 4th of August?      A. Yes, sir.

Q. Why do you remember that day?

A. It was the night after the raid, I moved out; around the 6th of August I moved out.

Q. You were living with Mrs. Warren there?

A. Yes, sir.

Q. Who else was living in the house at the time you were there?

A. Well, just Miss Penland, Mrs. Warren and [319] myself.

Q. Were you doing any work of any kind for Mrs. Warren while you lived there?

Mr. Dwight: Objected to as leading.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

Mr. Young: You may answer.

A. Yes, I was entertaining men.

Q. What do you mean by "entertaining men"?

(Testimony of Marjorie Scott.)

Mr. Dwight: May I suggest that the witness be advised as to her rights under the constitution?

Mr. Young: I have no objection to your Honor so instructing her.

The Court: Miss Scott, you are advised by the Court that you have the constitutional right under the 5th Amendment not to testify against yourself or not to testify anything that may tend to incriminate you. You have that constitutional right and privilege. If you do not desire to answer any of these questions upon that ground, you may claim your privilege and constitutional right and refuse to testify. You understand that?

A. Yes, sir.

By Mr. Young:

Q. You want to explain what you mean by "entertaining men"? A. I would rather not.

Q. On the ground of your constitutional privilege, is that correct? [320] A. Yes, sir.

Q. Were you entertaining men during the whole period that you were there? A. Yes, sir.

Q. And for that service did you receive any compensation from anyone?

A. Yes, sir, I did.

Q. And did Mrs. Warren get any part of that compensation?

A. Well, I paid her for my board and room out of that?

Q. You paid her for your board and room, and anything else?

(Testimony of Marjorie Scott.)

A. That is all that was considered, my board and room.

Q. Now, the day before you left the premises you stated—I believe you stated that there was a raid?

A. There was; yes, sir.

Q. Will you please tell the jury just what you know about that raid, what you saw there?

A. Well, I was in the back bedroom in my room and I heard a police whistle and I ran out and Mr. Burns placed us all under arrest in the house. I ran from the front room into the shower and hid. I heard a lot of commotion out there. I didn't see any of the officers outside.

Q. Approximately what time was it you heard this police whistle?

A. I don't know; I haven't any idea.

Q. Was it in the day time or evening?

A. It was late in the evening.

Q. Before the police whistle blew was there anyone else downstairs in that house, do you know, just before? [321]

A. Well, there was two soldiers from Schofield downstairs and myself.

Q. And yourself. Would you know those soldiers if you saw them again?

A. I would know one of them but I would not be positive of the other one.

Q. Do you know if one of them is out in the corridor now?

(Testimony of Marjorie Scott.)

A. Yes, one of them is out in the corridor.

Mr. Young: Mr. Bailiff, will you call Mr. Erpelding, please?

The Court: I don't think the bailiff heard you.

Mr. Young: (To the Bailiff) Call Mr. Erpelding.

(The bailiff responded by bringing a gentleman into the court-room and by saying "Sergeant Erpelding.")

By Mr. Young:

Q. Take a look at this gentlemen (indicating the same person). A. Yes, sir.

Q. State whether or not he is one of the men that was downstairs that night? A. Yes, sir.

Mr. Young: (To the same person) Q. What is your name? A. Erpelding.

Q. Sergeant Erpelding? A. Yes, sir.

Mr. Young: Let the record show the identification, if your Honor please.

The Court: Let the record so show.

By Mr. Young:

Q. How was Sergeant Erpelding dressed that night, if [322] you know?

A. He had on a pair of blue trousers, white shirt, no cap.

Q. Civilian clothes? A. Yes, sir.

Q. This other man, was he in civilian clothes?

A. No, sir; he was in uniform.

Q. He was in uniform. Where did you first see Sergeant Erpelding that night, August 3, 1937?

A. I first saw him in the parlor.

(Testimony of Marjorie Scott.)

Q. You first saw him in the parlor?

A. Yes, sir.

Q. Do you know how he got into the house?

A. No, sir, I don't.

Q. You first saw him in the parlor?

A. Yes, sir.

Q. Did you talk to him in the parlor?

A. Yes, sir, I did.

Q. As a result of that conversation, did you go any place or do anything?

Mr. Dwight: May I suggest, your Honor, that the witness can refuse to answer that question, if she wants to.

Mr. Young: The Court has already instructed this witness and I think Miss Scott understands her privilege.

The Court: You understand your privilege all throughout this testimony?

A. Yes, sir. [323]

By Mr. Young:

Q. What was your answer to that question?

A. Well, we went back in my bedroom and talked a lot.

Q. Now, did you later come out of the bedroom?

A. Yes, sir, we did.

Q. With Mr. Erpelding?                      A. Yes, sir.

Q. Was there anyone else out in the parlor when you came out?

A. This soldier in uniform was out there when we came out.



(Testimony of Marjorie Scott.)

Q. Do you know Billie Penland?

A. Yes, sir, I do.

Q. Did you see Billie Penland at any time on the bottom floor of that building?

A. Yes, sir.

Q. When did you first see her?

A. After I heard the police whistle.

Q. After you heard the police whistle. In what room were you when you heard the police whistle?

Mr. Dwight: Objected to as already asked and answered. She has already stated.

The Court: All right: Ask the question.

By Mr. Young:

Q. What room of that house were you in when you heard the police whistle?

A. After I saw them. I had just come back in the parlor, standing close to the door to the hall-way leading to the back of the house. I heard the police whistle. [324]

Q. You heard the police whistle? A. Yes.

Q. You were in the parlor at that time?

A. Yes, sir in the parlor.

Q. Where did the sound of the police whistle come?

A. It came from the bedroom side of the house.

Q. Whose bedroom was that?

A. Billie Penland's.

Q. Did you do anything?

A. I went and opened the door to see if Billie was all right.

(Testimony of Marjorie Scott.)

Q. That is, the door to Billie Penland's room?

A. Yes.

Q. What door is that you opened?

A. The door from the parlor leading into the bedroom.

Q. The door from the parlor leading into the bedroom?           A. Yes, sir.

Q. And when you opened the door, did you see anything?

A. Officer Burns was there. He placed us all under arrest.

Q. Did you hear him say that?

A. He said everyone in the house was under arrest.

Q. What did you do then?

A. I closed the door and went and hid in the shower. It is right off the hall leading from the door to the back of the house.

Q. How long did you stay in the shower?

A. I stayed about an hour—at least two, and went in the bedroom and laid down again when they left.

Q. Had you seen Miss Penland or the Officer Burns [325] at any time before you opened the door after the whistle had blown?

A. Yes. I hadn't seen Miss Penland for at least an hour before that happened.

Q. Did you go over to the door and open it before that time?           A. No, sir.

(Testimony of Marjorie Scott.)

Mr. Young: Pardon me just a moment, your Honor please.

Q. Now, did you see "Speed" Warren at any time during that evening?

A. Well, I hadn't seen her for quite sometime; no, sir.

Q. When is the first time that you saw her that evening before the whistle blew?

A. I should say about two hours before.

Q. Where was she at that time?

A. She was upstairs.

Q. When was the next time that you saw her after that?

A. At the police station in Honolulu.

Q. At the police station in Honolulu. I take it, you didn't see Mrs. Warren downstairs at any time after you had first seen her upstairs?

A. I did not.

Q. You didn't see her at any time after the police whistle blew in the house?

A. No, sir, I did not.

Q. Do you know where Sergeant Erpelding was when the whistle blew? [326]

A. Yes, he was sitting in a chair just right in front of Miss Penland's rooms in the parlor in front of her door.

Q. Did you at any time go near the front door after you heard the police whistle?

A. No, sir, I did not.

(Testimony of Marjorie Scott.)

Q. Do you know what the front door of "Speed" Warren's house looks like?

A. Yes, sir.

Q. Can you describe that?

Mr. Dwight: May I have my objection as incompetent, irrelevant and immaterial, as violating the defendant's rights under the 4th and 5th Amendments of the Constitution?

The Court: You may.

By Mr. Young:

Q. Will you describe what you remember of the front door?

Mr. Dwight: May I save an exception?

The Court: The Court will overrule the objection. Exception noted.

A. Well, the front door—there was one door that was tied back on the inside of the house and then the door that was kept closed all the time had a sheet of metal on the inside, one on the outside and had a little square window that had a curtain over it.

By Mr. Young:

Q. Do you know of your own knowledge what that sheet was used for on the front door?

A. No, I do not and I didn't at the time. [327]

Q. Do you know how the other soldier, the one in the soldier's uniform, got into the house?

Mr. Dwight: Already asked and answered. It is assuming something beyond the ability of this wit-

(Testimony of Marjorie Scott.)

ness to answer. She said she was in the bath room; when she came back a soldier was there.

The Court: You may ask the question.

Mr. Dwight: May I save an exception as incompetent, irrelevant and immaterial for the reasons stated?

The Court: Exception noted.

By Mr. Young:

Q. You understand the question?

A. How the soldier got in?

Q. Yes, the one in uniform. Who let him into the house?

A. No, sir, I can't say.

Q. Did you hear any noise in any other part of the house at any place when you heard the police whistle or after?

A. I heard some commotion at the front and back door.

Q. What kind of commotion?

A. Someone was knocking and banging on the door.

Q. You went into the shower room; you didn't see anyone in the house?

A. No, sir.

Mr. Young: Your witness.

#### Cross Examination

By Mr. Dwight:

Q. Miss Penland—— [328]

The Court: Miss Scott.

By Mr. Dwight:

Q. Miss Scott, pardon me, you say you moved out of the place on the 6th?

(Testimony of Marjorie Scott.)

A. It was approximately the 6th. We were held in the jail here for three days, I believe.

Q. You were held in jail for three days?

A. Yes, sir.

Q. And finally you were let out on the 6th?

A. Yes, sir.

Q. Now, when you say you moved out, how did you happen to go back into that place?

A. A police officer and matron were taken out there to get our things.

Q. You were taken out to get your things with a police officer. You recall where you got the keys?

A. The lady next door had the keys—no, the officer went to the police station at Wahiawa and got the keys.

Q. The police had the keys? A. Yes.

Q. You went down and went into the house. Were you looking for anything else?

A. We just got our clothes; we just hit out.

Q. Didn't you look around for the money box?

A. We did. Yes, we looked for the money box.

Q. You found the money box had been broken open?

A. We found out there wasn't anything in it.

Q. You found someone had taken a screw driver and broken open the money box? A. Yes, sir.

[329]

Q. You got your clothes and just moved out?

A. Yes.

Mr. Dwight: No further questions.

(Testimony of Marjorie Scott.)

Redirect Examination

By Mr. Young:

Q. Was any part of that money yours that you were looking for?      A. Yes, sir.

Q. How much was yours?

A. I had around \$80.00 in two envelopes in one box.

Q. What does that money represent?

A. Well, my fees for entertaining men.

Q. Mrs. Warren was holding it for you?

A. I had given her to take care of it for me.

Mr. Young: No further questions.

Mr. Dwight: That is all.

The Court (to the Witness): That is all. You are excused.

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CHARLES W. ERPELDING,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Sergeant Charles W. Erpelding.

The Court: What is your last name?

A. Erpelding.

By Mr. Young:

Q. I take it, your are a Sergeant in the Army?

(Testimony of Charles W. Erpelding.)

A. That is right.

Q. Where are you attached?

A. Schofield Barraks.

Q. How long have you been in Honolulu or the Hawaiian Islands?      A. Eight years.

Q. Eight years. Do you know a person by the name of Ilene Warren, also known as "Speed" Warren?      A. I do.

Q. Is she in the court-room here this morning?

A. Yes.

Q. Will you indicate where she is?

A. Right over there (indicating the defendant).

Mr. Young: Let the record show the indication.

The Court: Let the record so show.

By Mr. Young:

Q. How long have you known "Speed" Warren?

A. Oh, I guess practically ever since I have been over here.

Q. Do you know where she lives?      A. Yes.

Q. Where does she live?

A. I don't know what street it is on.

Q. You know what part of the Island?

A. Well, it is in Wahiawa.

Q. Would you know a picture of that house if you saw it again?

A. I believe I would. I wouldn't say for sure.

Q. Will you look at the four pictures on the board, Exhibits "D", "E", "F" and "G", and tell



(Testimony of Charles W. Erpelding.)

me whether or [331] if you remember that as being the house?

A. (Examining the pictures) This is the house.

Q. What is that, the front or rear entrance (indicating on Ex. "D")?

A. It is the front.

The Court: What exhibit?

Mr. Young: Exhibit "D".

Q. Have you ever been to that house?

A. Yes.

Q. When were you there the last time?

A. Well, I don't remember the date.

Q. Well, approximately. There is evidence in this case, Sergeant, that you were in the house on August 3, 1937. Was that the last time you were there? A. Yes.

Q. What happened that time, if anything, while you were there?

A. The place was raided by the police officers.

Q. Do you know about what time that happened?

A. Well, as near as I can recall it, between eight and nine o'clock.

Q. Prior to that date, when was the last time you had been there?

A. I couldn't say as to that.

Q. Did you go there often?

A. I expect I have been there six or seven times in the time I have been over here.

Q. In the eight years?

(Testimony of Charles W. Erpelding.)

A. That is right.

Q. Can you give us the last time of your visit before [332] August 3rd, before then?

A. I don't remember.

Q. What was your purpose of being there?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

A. I went over there to visit, to see a girl that was there.

By Mr. Young:

Q. You went over to visit a girl?

A. That is right.

Q. How did you get into the house?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, may it please the Court. It is not within the issues of this case.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

A. I rang the door *well*. Somebody hollered down, who was there. I told them, "A soldier"; somebody let me in.

By Mr. Young:

Q. Do you know who let you in?

A. One of the girls down there let me in.

Q. Do you know who she was?

(Testimony of Charles W. Erpelding.)

A. I didn't then; of course, I do now.

Q. You went in the house then?

A. That is right.

Q. Where did you go in the house? [333]

A. I went in the back room, downstairs.

Q. Was there anyone else there when you went in?

A. Nobody.

Q. Did anyone come in after you were there?

A. No, not that I know of.

Q. Well, did you see any people around there at any time after you got in the house?

A. Not until I had been in the back room and come out.

Q. Did you go into the back room with anyone?

A. Yes.

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, this whole line.

The Court: Objection overruled.

Mr. Dwight: Exception.

A. With one of the girls.

Mr. Dwight: May I ask this witness be instructed as to his rights.

Mr. Young: I have no objection.

The Court: Sergeant Erpelding, the Court instructs you that you have a constitutional right under the Constitution of the United States, the 5th Amendment, not to testify against yourself or answer any questions that may incriminate you. You do not have to answer any questions that may be asked by any of these attorneys that may tend

(Testimony of Charles W. Erpelding.)  
to incriminate you. You have the constitutional privilege. You can exercise your privilege at any time you wish or waive it.

My Mr. Young:

Q. Now, Sergenat—Withdraw the last question, if your Honor please, for the purposes of the record. When [334] did you first see this girl that you went into the room with?

A. That night there.

Q. After you had come into the house?

A. Oh, I guess about two, three or four minutes after I got in there.

Q. And when you saw her, was there any conversation of any kind?

A. No, just "Hello", that is all.

Q. Did you say "Hello"? A. Yes.

Mr. Dwight: I am going to move to strike that as hearsay.

The Court: It may be stricken as hearsay.

By Mr. Young:

Q. As a result of the conversation that you had with her, did you go any place in the house?

A. I refuse to answer that question.

Mr. Young: You have already answered that you did go in the back room with her.

Mr. Dwight: I ask he be advised to withdraw that, he not having been advised of his rights.

The Court: Do you wish to withdraw that?

The Witness: I do.

(Testimony of Charles W. Erpelding.)

The Court: The answer will be withdrawn and the jury instructed to disregard it.

By Mr. Young:

Q. Now, Sergeant, when did you leave the house?

A. When the police officers took me away.

Q. When the police officers took you away. About how [335] long was that after you had come into the house?

A. Roughly, half an hour; probably less than that.

Q. Now, while you were sitting in the parlor, did you hear anything unusual after you came back from the room?

A. Yes, I heard a whistle blow. Somebody started banging on the outside and said, "Open up, police."

Q. You heard all that inside?

A. That is right.

Q. Now, was there any other man in there at that time when you heard the whistle?

A. Yes; I didn't know; after the whistle blew there was another man.

Q. Did you see a man in the parlor after the whistle blew?      A. Yes, a soldier.

Q. Was he in uniform?

A. He was in uniform.

Q. Where was this girl that you first saw?

A. I don't know.

(Testimony of Charles W. Erpelding.)

Q. You don't know?           A. No.

Q. After the whistle blew, what happened, if anything?

A. Why, I heard the banging on the outside; some girl and a man come running out of a room there.

Q. And you say a man and a girl came out of a room?           A. That is right.

Q. What room did they come out of?

A. A room on my left; which one, I don't know.

Q. And which way did they go?

A. They went towards the front entrance.

Q. They went towards the front entrance of the house? [336]           A. That is right.

Q. And were they together or were they apart?

A. One of them was ahead of the other, two or three feet apart.

Q. Two or three feet apart. Who was ahead, the girl or the man?           A. The girl.

Q. And the man was behind her?

A. That is right.

Q. You saw them run across the room?

A. Yes.

Q. Did you see where they went?

A. They went in the front entrance and after that I couldn't say.

Q. You didn't see anything after they went into the front entrance?           A. No.

Q. What did you do after that?

A. I sat right there.

(Testimony of Charles W. Erpelding.)

Q. How were these two people dressed?

A. They wasn't dressed.

Q. They weren't. You say you sat right there?

A. That is right.

Q. How about the soldier in uniform?

A. He stayed right there, too.

Q. He stayed right there. How long did you sit there?

A. Until the cops came and took us away.

Q. Was the other man, the soldier, in uniform there when the cops came?

A. Yes. I started to go towards the front door on [337] the inside of the sitting room. He stopped me and said, "I am a police officer". He stopped me; I went back and sat down.

Q. From the time that the whistle blew and when the police came, had you moved at all?

A. No.

Q. Had the other soldier got up, too?

A. Not to my knowledge, he did not.

Q. Do you know that other soldier?

A. No.

Mr. Young: Pardon me just a moment. May we have our eleven o'clock recess at this time?

Mr. Dwight: I think we can dispose of this witness in a very few minutes, if we delay the recess for a little while.

By Mr. Young:

Q. Mr. Erpelding, will you step down to this diagram, referring to Prosecution's Exhibit "K"

(Testimony of Charles W. Erpelding.)  
in evidence? (The witness complies.) This is Muliwai Street up here (indicating); this is the front entrance of the house (indicating); front door; this is stairway going up to the right; stairway going right ahead; little hallway here (indicating); here's the parlor and bedroom marked on here (indicating on Ex. "K"). Will you state whether or not, from your best recollection, that is a portion of "Speed" Warren's home?      A. Yes.

Q. The bottom floor?      A. Yes.

Q. Will you take this ruler, please, and point to the [338] place, if you can, from which the two people ran out? (Handing ruler to witness.)

A. (Indicating with ruler) Right there; they came out and ran this way. They came out on my left. I was facing this way (indicating). These people came out from my left along there (indicating on Ex. "K").

Q. Where was this other soldier in uniform?

A. He was sitting over there on a chair or settee (indicating).

Q. I understand from your testimony after these two people passed out into the hall you couldn't see them any more?

A. No, sir, I couldn't see them any more.

Q. You remained there until the police came, is that correct?      A. Yes.

Mr. Young: Take the stand.

(The witness resumes the witness stand.)



(Testimony of Charles W. Erpelding.)

Q. Did you at any time give this girl anything in the house?

A. I refuse to answer that question.

Q. You refuse to answer on the ground of your constitutional rights?

A. That is right.

Q. When you came in the house that night, will you state the condition of the weather?

A. It was raining, drizzling rain.

Q. Will you describe from your memory as to what you saw that night, what that door looked like, the front door looked like that night? You couldn't say what it looked [339] like? A. It was dark.

Q. Did you see anything in front of the door?

A. A door mat was there.

Q. What kind of a mat?

A. A metal scraper.

Q. It was there when you went in?

A. Yes, I wiped my feet on it.

Q. Then you went in? A. Yes.

Q. Where was the door mat in relation to the door? A. Right in front of it?

Q. Right in front of it?

A. That is right.

Q. Will you step up to Prosecution's Exhibit "D" and indicate where the door mat was?

A. (Complying) Right there (indicating).

Mr. Young: Pointing to Exhibit "D" at the foot of the door.

(Testimony of Charles W. Erpelding.)

Q. Where did this voice come from that said, "Who is there?" A. I don't know.

Q. When you came to the door and knocked and rang a bell somebody said something and you said, "A soldier"?

A. But when I was going in I did not know.

Q. Yes. A. I did not know who it was.

Q. Someone did? A. Yes.

Q. And you said, "A soldier" ? [340]

A. That is right.

Mr. Young: Your witness.

Mr. Dwight: No cross examination.

Mr. Young: That is all, Sergeant: Take the eleven o'clock recess?

The Court: I had planned, in view of the fact we had quite a number of recesses, to continue and adjourn at quarter to twelve.

Mr. Young: I thought of the Reporter.

The Reporter: It is all right by me.

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WILLIAM L. ODLE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Sergeant William L. Odle.

Q. I take it, you are in the Army, Sergeant in the Army? A. Yes, sir.

(Testimony of William L. Odle.)

Q. Where are you attached?

A. Service Company, 21st Infantry, Schofield Barracks.

Q. How long have you been in Hawaii?

A. About eight years.

Q. About eight years, that is, continuous service here?

A. Yes, sir.

Q. Do you know a person by the name of "Speed" Warren, also known as Ilene Warren?

[341]

A. Yes, sir.

Q. Is she in the court-room here this morning?

A. Yes, sir.

Q. Will you indicate where she is?

A. Yes, sir, right over there (indicating the defendant).

Mr. Young: Let the record show the identification.

The Court: Let the record so show.

By Mr. Young:

Q. When did you become acquainted with Mrs. Warren?

A. Well, I don't know exactly. When I first come over here, I guess.

Q. Where did you meet her?

A. Over at her house, I guess.

Q. Where is her house?

A. In Wahiawa.

Q. Do you know where it is in Wahiawa?

A. Yes, sir.

(Testimony of William L. Odle.)

Q. About how many times have you been to that house?      A. I couldn't say.

Q. Roughly?

A. Twenty or thirty times.

Q. Twenty or thirty times in the period of eight years that you have been here?

A. Yes, sir.

Q. Would you know a picture of that house if you saw it again?      A. Yes, sir.

Q. Will you please look at the exhibits on the board, Prosecution's Exhibits "D", "E", "F" and "G" in evidence [342] and tell the jury whether or not the house portrayed in these pictures is the house of "Speed" Warren?

A. (Examining the same) This one looks like it (indicating).

Q. Pointing to "F".      A. Yes, sir.

Q. How about this one, "D"? (Indicating.)

A. I don't know.

Q. You couldn't state whether that was or not but "F" does look like that house?      A. Yes.

Q. There was testimony in this case that you were in that house?

Mr. Dwight: Just a moment. I am going to object to anything that is leading.

Mr. Young: It is merely preliminary. I will withdraw the question.

The Court: Proceed.

(Testimony of William L. Odle.)

By Mr. Young:

Q. Do you recall the last time that you were there in that house?      A. No, sir, I don't.

Q. Do you remember when it was?

A. No, sir.

Q. Was it this year or last year?

A. I think it was last year. I couldn't say for sure.

Q. Have you ever been at her house when anything unusual happened?      A. Yes, sir.

Q. What happened at that time? [343]

A. Well, a police raid.

Q. A police raid?      A. Yes, sir.

Q. And what do you know about that police raid? Tell the jury.

A. All I know, I was upstairs, me and "Speed", sitting up there talking and I heard a whistle. She said, "What is that?" I said, "Radio", and she got up and went downstairs.

Q. Was there anything else said between you two at that time, that you recall?

A. No, I don't think there was.

Q. No mention of any other word?

A. There might have been; I don't remember exactly.

Q. And after this whistle blew you say "Speed" got up?      A. Yes, sir.

Q. Where had she been sitting?

A. Sitting on a chair by the door.

Q. By what door?      A. The front door.

(Testimony of William L. Odle.)

Q. What do you mean by the front door? What do you mean by the front door, Sergeant?

A. Where the front stairs go down to the door.

Q. Down to the door? A. Yes.

Q. She was sitting near the door that leads downstairs? Is that correct? A. Yes, sir.

Q. Did you see her go out that door? [344]

A. I don't remember whether she went out the door or not. I think she did. I couldn't swear she did.

Mr. Dwight: Just a moment. I am going to move to strike that answer. It is purely a conclusion of this witness. He testifies he has no definite recollection whether she went down that door.

The Court: The Court will grant the motion and strike it.

By Mr. Young:

Q. In which direction did she go when the whistle blew?

A. I don't know. I didn't pay any attention.

Q. You don't know which way she went out of the room? A. No.

Q. What were you doing?

A. Reading the paper and listening to the radio.

Q. Did you take your eyes off the paper when you heard this police whistle?

A. She asked me what that was. I said, "Radio".

Q. Then what, you continued reading the paper?

A. Yes.

(Testimony of William L. Odle.)

Q. Is that why you didn't see where she went?

A. Yes, I guess.

Q. Now, did you see her at any time again during the evening?

A. After something happened downstairs she came back upstairs.

Q. About how long after the whistle blew did she come back upstairs? [345]

A. Ten or fifteen minutes.

Q. Had you at any time gone down those stairs after you heard the whistle?

A. No, sir.

Q. Did you at any time get off the couch?

A. Not until the police officers came up there and I got up.

Q. In other words, you didn't move from the time you heard the whistle until she came back?

A. No, sir.

Q. Did you hear any noise of any kind downstairs after the whistle blew?

A. Yes, sir, I heard some kind of a racket downstairs.

Q. Can you describe that racket?

A. Yes, sir, knocking on wood of some kind.

Q. Did you hear anything else?

A. I heard some hollering.

Q. Can you describe that?

A. Just hollering out, screaming like.

Q. And when "Speed" came up you say there was a police officer with her, right behind her?

(Testimony of William L. Odle.)

A. Yes, sir; there was two of them.

Q. Two of them?           A. Yes.

Q. Do you know this girl, Billie Penland?

A. I know her when I see her.

Q. Do you know whether or not you saw her upstairs after the whistle blew?

A. No, sir, I don't remember whether I did.

Q. You don't think you did. Are you sure?

[346]

A. I am not sure.

Q. You might and you might not?

A. I am not sure.

Q. Your best recollection is you are not sure?

A. Yes.

Mr. Young: Your witness.

#### Cross Examination

By Mr. Dwight:

Q. Did you hear anybody, any voice out of the air say "Give me a glass of water" or any words like that?

A. Yes, I think so, after that police officer come up there.

Q. When the police officers come upstairs, what happened?

A. I think "Speed" wanted a glass of water and I got up and got her a glass of water.

Q. That is as far as you recall it?

A. Yes.



(Testimony of William L. Odle.)

Q. You didn't see Miss Penland up there?

A. No, sir.

Q. The policemen were standing there all the time?

A. All the time, yes, sir.

Q. Until Mrs. Warren was taken away?

A. Yes, sir.

Mr. Dwight: No further questions.

Mr. Young: That is all. No further questions.

[347]

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HERMAN KELIIKIPI,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Herman Keliikipi.

Q. You are a police officer for the City and County of Honolulu?

A. Yes, sir.

Q. What are *you* duties as a police officer, briefly?

A. I am a police officer out at Wahiawa, motor patrolman.

Mr. Young: I have in my hand the return of subpoena in this case and filed with this Court. (Showing same to Mr. Dwight.) I have in my hand return of subpoena, on the front bearing Sergeant Odle, Sergeant Erpelding, Corporal J.

(Testimony of Herman Keliikipi.)

Flynn; on the opposite page is the name Herman Keliikipi.

Mr. Dwight: Just a moment. I object to this question as incompetent, irrelevant and immaterial, having no bearing on the issues.

The Court: What is the purpose?

Mr. Young: To show that Flynn was subpoenaed and is out of the Territory.

Mr. Dwight: We don't know who Flynn is. It is too remote.

The Court: The Court will sustain the objection.

Mr. Young: That is all. No further questions.

The Court: (To the witness.) That is all. [348]

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Mr. Young: At this point I desire to read in evidence the affidavit that was referred to. I think your Honor would like to go over the authorities.

Mr. Dwight: May I suggest this that at this time we continue the trial until tomorrow morning. I make a motion for the continuance of this trial. I make a motion for the continuance. I offer for the record the certificate of a reputable doctor practicing in the Territory. The defendant has sacrificed her health. I will offer the certificate of the doctor in evidence.

Mr. Young: I object to this on the ground it is hearsay. I have no objection to the continuance.

The Court: This may be part of the record. The Court grants your motion, Mr. Dwight, and con-

tinues the case until tomorrow morning at nine o'clock, and we will have this record for what it is worth as part of the case.

Mr. Dwight: I will be willing to take the matter up this afternoon at any time that is convenient.

The Court: At any time is convenient to me.

Mr. Young: Two o'clock is satisfactory.

Mr. Dwight: Make it a little later.

The Court: Take it up at 2:30. This matter is continued until tomorrow morning at nine o'clock, and the jury is instructed to observe the cautions heretofore given. [349]

Mr. Young: Before adjournment I would like to know whether we are going to proceed all day.

The Court: Do you know whether you will ask for another continuance tomorrow at noon?

Mr. Dwight: Yes. She can be here tomorrow morning.

The Court: Case continued and adjourned until nine o'clock tomorrow morning. Court stands adjourned.

(A recess was taken until Thursday, February 10, 1938, at nine o'clock a. m.) [350]

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Honolulu, T. H., Feb. 10, 1938.

(The trial was resumed at 9:00 o'clock a.m.)

The Clerk: Criminal 14332 Territory against Ilene Warren alias "Speed" Warren.

Mr. Young: Ready for the Territory.

Mr. Dwight: Ready for the defendant.

Mr. Young: Stipulate the defendant and the jury are present, your Honor.

The Court: Let the record so show. The Court at this time is prepared to rule on the offer of the government in respect to the affidavit that was attached to the Motion to Suppress and the objection of Mr. Dwight thereto. The Court sustains the objection of Mr. Dwight. (See p. 287 of Transcript for offer.)

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CLARENCE C. CAMINOS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Clarence C. Caminos.

Q. What is your occupation, Mr. Caminos?

A. Police officer.

Q. And what is your rank as a police officer?

A. Captain of the Vice Squad, Honolulu Police Department.

Q. How long have you been a police officer with the Honolulu Police Department?

A. For the last ten years. [351]

Q. How long have you been captain?

A. About six months.

(Testimony of Clarence C. Caminos.)

Q. About six months. You were with the Honolulu Police Department on August 3, 1937?

A. Yes, sir.

Q. What rank were you then?

A. A captain.

Q. A captain at that time? A. Yes, sir.

Q. Do you recall that date for any particular reason? A. Yes, sir.

Q. What reason?

A. I had an arrest made at Wahiawa, the home of Ilene Warren.

Q. Will you please tell the jury about that arrest?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as the information is based upon the arrest having been obtained in violation of this defendant's rights under the 4th and 5th Amendments of the Constitution; upon the further grounds there was no arrest; upon the further ground that there was no proper, legal arrest made and upon the further ground that at the time this witness was a trespasser.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception.

By Mr. Young:

Q. What time did you go out there?

A. At Ilene Warren's place, you mean? [352]

Q. Yes. A. About five to nine.

Q. About five to nine? A. Yes, sir.

(Testimony of Clarence C. Caminos.)

Q. Was that morning, night or when?

A. In the evening, five p.m.—I mean about five to nine.

Q. Where had you been just prior to that?

A. I was at the Wahiawa Police Station.

Q. Who was with you, if anyone?

A. Captain Kalauli, Officer Francis Apoliona, Officer Yuen, Officer Chun and the deceased, Wah Choon Lee.

Q. And where did you go from the Police Station?

A. From the Police Station I came down Kuahiwi Street.

Q. May I interrupt, please. Will you step down to the diagram? (The witness steps down.) Maybe you can show us on here—I refer you, Mr. Caminos, to Prosecution's Exhibit "A" in evidence. This is a plan of a certain district in Wahiawa. This is Kuahiwi Avenue (indicating); Olive Avenue (indicating); Neal Street (indicating). Do you believe you are sufficiently familiar with the plat to show the course you went?

A. Yes. From Wahiawa Police Station we came along Kuahiwi Avenue, up Neal Avenue, up Muliwai to the driveway near this sisal plant (tracing and indicating on Ex. "A".) I stood there while Officer Burns came up to the front of Ilene "Speed" Warren's home. I walked up to the concrete walk, stood there for a while. I noticed the door open and Officer Burns walked in. While I

(Testimony of Clarence C. Caminos.)

was standing there with the other officers—I was there a couple of minutes—I [353] I heard a police whistle blow. I rushed up to the front entrance.

(The last answer was read.)

Q. Now, Mr. Caminos, how many men, police officers, were with you at the time you heard the whistle blow?

A. Just myself, Captain Kalauli, Wah Choon Lee, the deceased, and Officer Yuen.

Q. And Officer Yuen. Just turn around and face this way (indicating) so the jury can hear.

A. Captain Kalauli——

Q. How many of you?           A. Four of us.

Q. Four of you. How many started from the court house?           A. Seven.

Q. Where were the others?

Mr. Dwight: If he knows.

A. We came along down Kuahiwi Avenue until we got to around here somewhere in the rear of Ilene Warren's home (indicating on Ex. "A"), then Officers Apoliona and Chun took a little trail into a vacant lot here (indicating). Captain Kalauli, Officers Yuen and Burns——

Mr. Dwight: Just a minute. Who are the two went through this empty lot?

A. Francis Apoliona and Officer Chun.

By Mr. Young:

Q. Yes.

(Testimony of Clarence C. Caminos.)

A. (Continuing) Captain Kalauli, Officer Burns, Officer Yuen and Wah Choon Lee, the deceased, and myself, we walked down to the end of Kuahiwi Avenue. Officer [354] Burns took the railroad track towards Muliwai Avenue and the rest of the officers and myself came down Neal Avenue up to Muliwai until we got to this sisal plant here (tracing and indicating the route taken.)

Q. Now, who was in command or charge of this group of police?

A. I was in command, sir.

Q. Did you give any orders to these two men?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial.

Mr. Young: I submit it, your Honor.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

A. I told these two officers to be in the back here (indicating on Ex. "A") and when they hear the signal—the signal would be a blast of the police whistle—for them to rush up from the rear and guard this place here (indicating).

By Mr. Young:

Q. What do you mean by "this place"?

A. In the rear of "Speed" Warren's place.

Q. Now, there were four of you, then, after Officer Burns left you; there were four of you present when the whistle was blown, where you were standing?



(Testimony of Clarence C. Caminos.)

A. Yes, sir, where I was standing by the sisal plant.

Q. Were all of your police officers there?

A. Yes, sir.

Q. You were in command of all of them?

A. Yes, sir. [355]

Q. Now, when you heard the whistle, where were you officers, the four of you, in relation to the street and the property line?

A. We were out on the street, right near the sisal plant, on the corner of the boundary of "Speed's" property, that is, facing mauka.

Q. Do you know "Speed" Warren's house?

A. Yes, sir.

Q. Are you acquainted with the front door?

A. Yes, sir.

Q. Approximately how far were you from the front door—

A. You mean from the sisal plant?

Q. (Continuing) when you heard the whistle?

A. About sixty feet; might be a little bit more or less.

Q. Is that in a straight line of a course which would take you to get to the door?

A. That is in a straight line.

Q. Now, when you heard this whistle, which way did you go to the door? Did you take a straight line or did you go another way?

A. I went up the road into the walk here (indicating on Ex. "A").

(Testimony of Clarence C. Caminos.)

Q. Approximately how long did it take from the time you heard the whistle until the time you arrived at the door to get there?

A. About a half a minute.

Q. About half a minute? A. Yes, sir.

[356]

Q. Now, where were the other officers? What did they do, if you saw them, when the whistle blew?

A. My instructions was this——

Mr. Dwight: Never mind what your instructions were. Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Young:

Q. Will you take the stand, please? (The witness resumes the witness stand.) Do you know "Speed" Warren?

A. I have known her for about eight years.

Q. How well do you know her?

A. Very well. She speaks to me and I speak to her.

Q. She knows you by sight? A. Yes, sir.

Q. And you have spoken to one another, is that correct? A. Yes, sir.

Q. You know where she lives?

A. Yes, sir.

Q. Will you please take a look at the exhibits on the board, "D", "E", "F" and "G", and tell the jury whether or not that is the picture of the house where she was living on August 3, 1937?

(Testimony of Clarence C. Caminos.)

A. This is a picture of the house (indicating Ex. "D").

Q. That is a picture of the house. What part of the house are you pointing to on Exhibit "D"?

A. This is the front part of the house (indicating).

Q. Is that the front door? A. Yes, sir.

Mr. Young: Indicating on Exhibit "D" in evidence, your Honor. [357]

Q. Will you please tell the jury just what you did when you heard this whistle blow?

A. When I heard the whistle blow I ran up to the front door. I kicked the door on the right and noticed that the door didn't open in, it opened out. I told the other officer not to kick the door, being that the door opens out. He then——

Q. What officer was that?

A. Wah Choon Lee, the deceased.

Q. Wah Choon Lee, the deceased?

A. Yes, sir.

Q. Would you know a picture of him if you saw it? A. Yes, sir.

Q. I show you Prosecution's Exhibits "B" and "C" in evidence (handing same to witness). Will you look at these pictures?

A. (Examining the same) That is the officer.

Q. Is that Wah Choon Lee, the person you are talking about? A. The deceased.

Mr. Dwight: There is no more Wah Choon Lee.

(Testimony of Clarence C. Caminos.)

By Mr. Young:

Q. Now, you told this Wah Choon Lee, this police officer, not to kick in because the door opens out?

A. Yes, sir.

Q. And what happened then?

A. He then rushed the door and he grabbed the metal part and I heard a yell, a loud yell, and I looked towards him, towards the left. I noticed that he was knocked back. I glanced to my left and I noticed that Captain [358] Kalauli had him. When I turned towards him, then I noticed the door was opened, partly opened.

Q. Now, how close were you to him at the time he grabbed the door?

A. I would say about a foot, might be less.

Q. About a foot, might be less?

A. About a foot, might be less.

Q. Where was he standing with relation to the door?

A. He was standing on my left right in front of the door.

Q. About how far from the front of the door?

A. About two feet.

Q. Did you notice what he was standing on, if anything?

A. I couldn't say.

Q. What was the nature of the place that his feet were resting on?

Mr. Dwight: Objected to as leading.

The Court: Objection overruled

Mr. Dwight: Save an exception.

The Court: Exception noted.

(Testimony of Clarence C. Caminos.)

A. There was a concrete walk.

By Mr. Young:

Q. There was a concrete walk?

A. Yes, sir, and a steel mat at the front.

Q. A steel mat?           A. Yes, sir.

Q. Was he on the steel mat or not?

A. That I couldn't say.

Q. Were you on the steel mat? [359]

A. Yes, sir.

Q. And was he standing right next to you?

A. Right next to me, sir.

Q. Will you please step down here (indicating) and let this represent the door here (indicating); this is the front door (indicating). You place yourself in the position that the deceased was at the time that he grabbed the iron and place me where you were.

A. (The witness steps down and complies with request) Here (demonstrating).

Q. This represents the door (indicating)?

A. Yes, sir.

Q. About like this (indicating)?           A. Yes.

Q. Where were the other officers?

A. Somewhere in the back.

Q. You two were the closest?           A. Yes, sir.

Q. Now, you just show the jury exactly the way he reached up and grabbed this sheet?

(Testimony of Clarence C. Caminos.)

A. He lifted up like this (demonstrating), grabbed it, yelled and fell back.

Q. Now, what was the condition of the weather when you heard the whistle blow?

A. Well, it had been raining before that.

Q. What *as* the condition of the walk as you came in, as you recall?

A. It was kind of wet.

Q. Now, how were you dressed?

A. I was dressed civilian and I had a rubber-soled [360] shoe.

Q. You had a rubber-soled shoe?

A. Yes, sir.

Q. What kind of rubber-soled shoes?

A. It is one of those suede shoes, cloth gum shoes.

Q. Mr. Dwight has a pair of shoes. Same type of soles?

A. Yes, it is the same kind of soles.

Q. Same kind of rubber soles?           A. Yes.

Mr. Dwight: May the record show the witness identifies my shoes?

By Mr. Young:

Q. Now, during the time that you were there after you heard the whistle, just who all touched that door, to your knowledge, on the outside?

A. Wah Choon Lee.

(Testimony of Clarence C. Caminos.)

Q. From the time that the whistle blew until the time that the door was opened, how many people, to your knowledge, touched that door?

A. One.

Q. Who was that?

A. Wah Choon Lee, the deceased.

Q. Didn't you just testify that you kicked the door?

A. Yes, I kicked the door but I didn't grab it with my hand.

Q. How did you kick the door?

A. With my right foot.

Q. Was that before or after Wah Choon Lee grabbed the door and gave the yell? [361]

A. That is before he grabbed the door.

Q. That is before he grabbed the door?

A. That is before he grabbed the door.

Q. What portion of the door did you kick?

A. The right part of the center.

Q. The right part of the center?

A. Yes, sir.

Q. Now, can you describe to this jury just how that door looked to you that night?

A. Yes, sir.

Q. Will do you do that, please?

A. On the board?

Mr. Dwight: May I have my objection to this testimony upon the ground it is incompetent, irrelevant and immaterial and is an attempt to indi-

(Testimony of Clarence C. Caminos.)  
rectly prove what this Court had positively excluded from the evidence under the ruling on the motion to suppress?

The Court: You may have your objection. Objection overruled. Exception noted.

By Mr. Young:

Q. Take a piece of chalk.

Mr. Dwight: May I ask this witness to confine his knowledge of that door to that incident and not to any other time, not an examination at the police station?

The Court: Mr. Caminos, will you confine your description to the way the door appeared from your memory at the time you were kicking it and not in any way based upon your observation [362] in the Police Station?

A. (Drawing on a sheet of paper tacked to the blackboard.) That is the door.

By Mr. Young:

Q. Now, you have got a line, what does that line represent (indicating on drawing)?

A. This here (indicating), that is the top of the metal plate.

Q. Is that the place where Wah Choon Lee grabbed, up here (indicating)?

A. Yes, sir.

Q. What is above here (indicating on Ex. "L")?

A. A screen and a gunny sack at the back.

Q. Now, where does this sheet end?



(Testimony of Clarence C. Caminos.)

A. About here (indicating on drawing).

Q. Will you draw a line, please?

A. (The witness draws.)

Q. In other words, it is a metal *stip* from this point to this point (indicating), these inside lines on the door? A. Yes, sir.

Q. What material is this, if you recall?

A. We had been guessing.

Q. You have got two little circles; what do they represent?

A. This is a Yale lock; this is a button (indicating on drawing).

Q. You mean a door button? A. Yes, sir.

Q. Now, where was this mat that you have spoken of? Can you draw that in, this steel mat?

[363]

A. (Drawing on paper). This is the walk.

Q. This is the walk and this is the mat? (Indicating on Ex. "L") A. Yes, sir.

Mr. Young: You are a pretty good artist. Take the stand, please.

Q. Now, if you recall, was there any handle on the door by which you could pull it out?

A. I couldn't recall that.

Q. You can't recall? A. No.

Q. Now, did Wah Choon Lee fall back immediately after touching this door, when he gave this yell, or what?

Mr. Dwight: Objected to as leading and *alread-*  
*ing* having been asked and answered. I object particularly to the word "immediately".

(Testimony of Clarence C. Caminos.)

The Court: Objection will be sustained.

By Mr. Young:

Q. Can you describe, Mr. Caminos, or illustrate just how the deceased acted when he came in contact with that metal plate? A. Yes, sir.

Q. Step down and illustrate.

Mr. Dwight: Objected to as already having been illustrated by this witness with all the gestures.

Mr. Young: After he came in contact.

Mr. Dwight: He can't tell whether he came in contact with anything. How can he say what happened to Wah Choon Lee and how can he say when?

[364]

Mr. Young: After he touched the door, just how did his body act. That is what I want to know. Submit the question, your Honor.

Mr. Dwight: Same objection, calling for something beyond this witness' ability to answer. He is not a doctor.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

A. Just this way (demonstrating quivering), then he dropped back.

By Mr. Young:

Q. Now, you hesitated a while, while he was there. Let us have that over again.

A. Like that (again demonstrating).

Q. Approximately how long?

(Testimony of Clarence C. Caminos.)

A. About that length of time (demonstrating).

Q. Then you saw he fell in the arms of Captain Kalauli?

Mr. Dwight: Objected to as leading, assuming something not in evidence.

The Court: Objection sustained.

By Mr. Young:

Q. Now, what happened after this, if anything? What did you do?

A. When Wah Choon Lee, the deceased, fell back I glanced over my left side. I noticed that Captain Kalauli had him. When I turned towards my right, facing the door, I noticed then that the door was open and Ilene Warren was standing right in the porch there at the [365] entrance of her home and Officer Burns was standing at the entrance of the sitting room.

Q. And so, looking in, facing that door, on which side was Ilene Warren, the right or left, looking in?

A. She was on my left looking in.

Q. As you looked into the door?

A. Yes, sir.

Q. And where was Burns?

A. Burns was on my right, that is, the center of the door at the entrance of the sitting room.

Q. Now, did you do anything then?

A. Just as I faced the door and noticed Ilene Warren there, she asked me, "What is this all

(Testimony of Clarence C. Caminos.)

about?" I told her she was under arrest and she knew what it was all about. Then I asked Officer Burns, I says, "Where are the other women?"

Mr. Dwight: Just a moment. I want that answer.

(The last answer was read.)

By Mr. Young:

Q. Now, did you look at the door further?

A. Yes, sir.

Q. What did you do?

A. Before I stepped into the place I took my flashlight and flashed it on the door and up on the upper hinge of the door I noticed clearly a wire was soldered on the hinge.

Q. Will you just draw that part of the door, please?

A. (The witness draws on Exhibit "L".)

Q. That is the place where you saw the wire?  
(Indicating) [366]

A. Yes, on the hinge on the inside.

Q. Now, as you are looking at this door, facing it, wire hinge on this side (indicating), wire going there (indicating), with relation to this door, can you show which side "Speed" Warren was on as you go in? A. This way (indicating).

Q. Which way does the door open?

A. Opens out.

Q. Opens out? A. Yes, sir.

Mr. Dwight: May I move to strike this last answer of this witness, particularly that portion of

(Testimony of Clarence C. Caminos.)

the testimony wherein he says that the hinge—  
I mean that the connection was on the hinge inside  
of the door, upon the ground that it is a violation  
of this defendant's rights and upon the further  
ground that Captain Caminos was a trespasser.

The Court: You observed that at that time?

A. Yes, sir, at that time.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. What was the condition of the light on the  
outside just before you people got to the door?

A. I couldn't say the condition of the light,  
although there was a light there.

Q. Where was the light?

A. On top of the door.

Q. Will you step down and mark where the light  
was? [367 ]

A. (The witness steps down and marks on Ex.  
"L").

Q. What kind of a light was that?

A. Electric light.

Q. *What* that burning? A. Yes, sir.

Q. When you arrived at the door?

A. Yes, sir.

Q. Now, did you see the body of Wah Choon  
Lee again after you looked back over your shoulder  
and saw him? Did you see him again?

(Testimony of Clarence C. Caminos.)

A. I did.

Q. And where did you see him again?

A. You mean after the night or you mean the same night?

Q. At the time you looked around and saw him, I believe you have testified, in somebody else's arms?

A. Captain Kalauli's.

Q. You turned around and saw the door open?

A. Yes, sir.

Q. Did you see Wah Choon Lee again?

A. Yes, sir, I did.

Q. How soon after that?

A. After Ilene Warren asked me to get dressed, I told Officer Yuen to go with her. Meantime Captain Kalauli told me to go out there and give him a hand. He told me to hold Wah Choon Lee while he would get an automobile to have him taken to the hospital.

Q. Did you see anyone take him away?

A. Yes, sir.

Q. Who took the body of Wah Choon Lee away?

A. Officer Edward Puulei and Officer Francis Apoliona. [368]

Q. Now, when you heard that whistle blow, what was in your mind? What did you think that was?

A. When I heard that whistle blow I knew an arrest had been made and the officer needed assistance.

Mr. Dwight: I move to strike as incompetent, irrelevant and immaterial and calling for the con-

clusion of this witness, based entirely upon hearsay. I would like to argue that point.

Mr. Young: I would, too. May the jury be excused? I would like to make an offer of proof.

The Court: All right. The jury will be excused, pending this argument.

(The jury left the court-room.)

Mr. Young: Let me make my offer of proof. If your Honor please, I proposed to show by this witness that he had an arrangement with all the officers. He was in command of this squad. They had an arrangement with the officer in the house. When they had sufficient evidence of a crime about to be committed, the signal was to blow the whistle. That officer blew the whistle. Caminos knew a crime was being committed or was about to be committed in that house. The other officers were in the same frame of mind. We have a right to show what was in the mind of the officer when he entered upon the premises, in order to show whether he had a lawful right upon the premises. That is the only way we can prove it. It is a well known exception. Where intent or motive is concerned, this man can testify upon that. That [369] is our purpose of this evidence.

Mr. Dwight: May it please the Court, the testimony of this witness so far, as I understand it, is they went up there to raid "Speed" Warren, I should judge, as far as the testimony is concerned, for the crime of maintaining a house of ill fame.

The Court is familiar already with the testimony adduced—either that or for the specific act of prostitution or perhaps fornication, whatever that may be, and that in the event that the act was committed, the police officer was to signal, thereby giving the police officers outside, who had no search warrant, who had no warrant of arrest, knowledge of that fact; and I will add, too, the additional fact that is not in evidence that this house was a notorious house of prostitution, just for the purpose of my argument, and that fact was known to Caminos and to Wah Choon Lee at the time they were out in the street. Now, that question has been definitely settled by the Ninth Circuit Court of Appeals and by the Eighth Circuit Court of Appeals.

The Court: Just a minute. You are going to get them?

Mr. Dwight: I have them; I have the citations. The Eighth and Ninth Circuit Courts of Appeals have definitely held and this Court is bound by that, and they are entitled to consideration at the hands of the defendant.

The Court: You are going to get those cases.

[370]

The Court will take a recess.

(A brief recess was taken.)

(The jury returned to the court-room and jury box.)



(Testimony of Clarence C. Caminos.)

(The reporter read as follows:)

“Q. Now, when you heard that whistle blow, what was in your mind? What did you think that was?”

A. When I *read* that whistle blow I knew an arrest had been made and the officer needed assistance.”

Mr. Dwight: I move to strike that answer as incompetent, irrelevant and immaterial, as calling purely for the conclusion of this witness, based upon no fact whatsoever.

The Court: Well, the Court will grant that motion as calling for a conclusion—he knew what happened—that is, the answer on the motion to strike.

By Mr. Young:

Q. Now, Mr. Caminos, what was in your mind after you heard that whistle when you started to go on the premises?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial on the grounds already stated.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

A. At the time I heard the whistle I had in mind that some kind of an arrest had been made and that he needed assistance. [371]

(Testimony of Clarence C. Caminos.)

By Mr. Young:

Q. And that you were going on there to assist an officer? A. Yes.

Q. Officer Burns? A. Officer Burns.

The Court: Mr. Young, did you state that you wanted to put that doctor on?

Mr. Young: No, I would rather take this evidence.

Q. Now, did the other officers with you follow you? A. Yes, sir.

Q. Did they do so at your command?

A. Yes, sir.

Mr. Dwight: Objected to as leading, both questions.

The Court: It is already asked and answered.

Mr. Dwight: I move to strike the answer. I withdraw my objection to save time.

A. Yes, sir.

The Court: Proceed.

By Mr. Young:

Q. Now, do you know how the deceased was dressed? A. He was dressed in civilian clothes.

Q. He was dressed in civilian clothes?

A. Yes, sir.

Q. And do you know what kind of shoes he was wearing? A. He had leather shoes on.

Q. Do you know that? A. Yes, sir.

Q. What kind of soles were on the shoes? [372]

A. Leather soles.

(Testimony of Clarence C. Caminos.)

Q. Now, at what place did you make this arrangement about the whistle blowing?

A. At the Wahiawa Police Station.

Q. Who was present at that time?

A. All the officers that accompanied me down.

Q. Was the deceased there?           A. Yes, sir.

Q. When you heard this whistle did you believe that a crime had been committed?

Mr. Dwight: Objected to on the ground as calling for a conclusion of this witness and as incompetent, irrelevant and immaterial.

Mr. Young: It is relevant to show this man's mental state at that time.

Mr. Dwight: May I ask that the question be read?

(The last question was read.)

Mr. Dwight: My objection is that it is calling for the conclusion of this witness.

The Court: It has already been asked and answered.

(The reporter read as follows:)

“Q. Now, Mr. Caminos, what was in your mind after you heard that whistle when you started to go on the premises?”

A. At the time I heard the whistle I had in mind that some kind of an arrest had been made and that he needed assistance.”

Mr. Dwight: I move to strike that answer, particularly the latter portion of that answer as purely [373] calling for a conclusion of the witness.

(Testimony of Clarence C. Caminos.)

The Court: Motion denied.

Mr. Dwight: Exception.

The Court: Now, read this last question.

(The reporter read as follows:)

“Q. When you heard this whistle did you believe that a crime had been committed?”

The Court: The Court will sustain the objection on the ground it is leading and suggestive.

Mr. Dwight: Exception.

By Mr. Young:

Q. Well, did you have anything else in your mind at the time you heard this whistle? What did you have in your mind?

Mr. Dwight: Objected to as leading and already answered.

Mr. Young: I don't think the witness has answered.

The Court: The Court will allow that question to be answered. Objection overruled.

Mr. Dwight: Save an exception.

(The last question was read.)

By Mr. Young:

Q. Just what did you have in your mind?

A. That an arrest had been made and that he had called for assistance. That is why I went there for.

Q. That is why you went there. Did you have any suspicion as to what the arrest was for?

A. No, sir.

(Testimony of Clarence C. Caminos.)

Q. You didn't know what the arrest was for?  
[374]

A. No, sir.

Q. Or what crime was being committed?

A. No, sir.

Mr. Young: Will the Court excuse me just a moment.

The Court: Certainly.

By Mr. Young:

Q. Now, where did this all happen?

A. At the home of Ilene Warren at Wahiawa on Muliwai Avenue.

Q. That is on this Island? A. Yes, sir.

Q. City and County of Honolulu?

A. Yes, sir.

Mr. Young: No further questions.

Cross Examination

By Mr. Dwight:

Q. Caminos, how did you happen to go out to Wahiawa with this large group of police officers?

A. I received complaints from the citizens out there.

Q. That is why you went out? A. Yes, sir.

Q. You recall testifying here on January 29th?

A. Beg pardon?

Q. You recall testifying here on January 29th of this year? A. Yes, sir.

Q. Do you recall in answer to that question you stated you were ordered out to make a raid on "Speed" Warren? [375] A. I don't recall that.

(Testimony of Clarence C. Caminos.)

Q. You don't recall. If the reporter refreshes your memory——

A. It might be.

Q. We will take it up in the recess. You deny that you told me that you were ordered out to Wahiawa to raid "Speed" Warren?

A. I wouldn't deny that.

Q. You wouldn't deny that?

A. I don't recall saying that.

Q. Well, what were you going out to Wahiawa for?

A. I was going out to Wahiawa to make a raid on the home of Ilene Warren.

Q. Exactly, and you were ordered out there to make that raid?

A. Yes, sir.

Q. By whom?

A. By the Chief of Police, William A. Gabelson.

Q. And you knew at that time that "Speed" Warren had never been convicted of any offense?

A. I knew she was convicted of one.

Mr. Young: It is calling for the conclusion of this witness, your Honor.

The Court: It has already been asked and answered.

Mr. Young: I object. Anyway, I ask the answer be stricken and the jury instructed to disregard it.

Mr. Dwight: I have no objection to it being stricken, if counsel objects. [376]

The Court: It will be stricken on the suggestion of both counsel and the jury asked to disregard the question.

(Testimony of Clarence C. Caminos.)

By Mr. Dwight:

Q. You went out to Wahiaawa? A. Yes, sir.

Q. Without any search warrant?

A. Yes, sir.

Q. You never had the people sign any affidavit to support a search warrant? A. No, sir.

Q. And you went out there without a warrant of arrest? A. Yes, sir.

Q. And wasn't that matter discussed in the Police Station? A. About the search warrant?

Q. Yes. A. No, sir.

Q. You weren't told you had no right to go there without a search warrant or warrant of arrest? A. No, sir.

Q. It was not discussed in conference?

A. No, sir.

Q. Do you know Judge O'Connor?

A. Yes, sir.

Q. You ever discuss this case with him?

A. No, sir.

Q. Now, you say, Mr. Caminos—

A. Yes, sir.

Q. (Continuing) you are positive that you went up, you [377] and your other officers went up Neal Avenue? A. Yes, sir.

Q. You are also positive Mr. Burns went up the railroad track? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

(Testimony of Clarence C. Caminos.)

Q. And you finally met—I was wondering why they had this on the map (referring to Ex. "A")—by the sisal plant?      A. Yes, sir.

Q. You hid behind the sisal plant?

A. No, alongside.

Q. Did you see a big "No Trespassing" sign on that hedge?      A. No, sir.

Q. You seen Mrs. Warren's sign?

A. No, sir, I seen it about a week ago.

Q. I mean a long time ago when you were a policeman at Wahiwawa?      A. No, sir.

Q. You didn't?      A. No, sir.

Q. So you laid in wait just about over here somewhere (indicating on Ex. "A")?

A. Yes, sir.

Q. You say you saw Burns walk up the street and go to the door?      A. Yes, sir.

Q. What did he do when he got to the door?

A. He stood at the door. If he did knock or press the [378] bell, that I couldn't say.

Q. You saw him go to that door?

A. Yes, sir.

Q. You had your eye on him all the time?

A. Yes, sir.

Q. You saw him go. You don't know whether he pressed the bell or not?      A. Well, I couldn't say.

Q. Then he went in?      A. Yes, sir.

Q. You watched him all the time?      A. Yes.

Q. You are sure of that?      A. Yes, sir.



(Testimony of Clarence C. Caminos.)

Q. Mr. Burns did not walk in, walk back around the house?

A. Mr. Burns did not walk around the house. He walked up to the door; he walked back to the sidewalk, then walked back.

Q. Did you talk your testimony over with Mr. Burns?      A. No, sir, I did not.

Q. Was Mr. Burns' testimony of January 24th discussed with you in any way, Mr. Caminos?

A. No, sir.

Q. You are sure of that?

A. I am sure about that.

Q. Now, after you heard this whistle—Was it one whistle that you were to hear or what?

A. Well, my instructions was this,—when an arrest was made, to blow his whistle. I heard the whistle once. [379]

Q. You sent Mr. Burns in there to try and make a case of prostitution, fornication, to try to make one of the women?      A. Yes, sir.

Q. To try to make one of the women. If he made the woman, to blow the whistle?      A. Yes, sir.

Q. That is exactly what you told him?

A. Yes, sir.

Q. When he blew the whistle you thought Burns had had intercourse with the woman?      A. No.

Q. Answer that question yes or no?      A. No.

Q. What did you think when the whistle blew?

(Testimony of Clarence C. Caminos.)

A. When the whistle blew I had in mind an arrest had been made; for what offense, I couldn't say.

Q. You remember telling me on January 29th that you went in there because you thought the act of prostitution had been committed?

A. No, sir.

Q. Now, isn't that a fact, you thought he had committed intercourse with some girl, had given the girl marked money, had fixed it? A. No, sir.

Q. Didn't you give him instructions to have intercourse with one of the women?

A. I did not instruct him to have intercourse with the woman in that home.

Q. You just told him to go in there and give her [380] three marked dollars? A. Yes, sir.

Q. That is all you told him to do?

A. Yes, sir.

Q. When he blew the whistle you knew that Burns had gone in and given this woman three marked dollars?

A. At that time I did not think that Burns had gone in. I thought that Burns had given someone else the money to go in and when this person had gone in an arrest had been made.

Q. Now, you marched up with all the police officers? A. Yes, sir.

Q. You sent Burns ahead to go in?

A. Yes, sir.

(Testimony of Clarence C. Caminos.)

Q. You told Burns, according to your testimony, that Burns was to go in and give this woman three dollars; when he gave her three marked dollars, blow the whistle?

A. My instructions was when Burns got in to see that she got the money, but Burns was instructed not to have intercourse with any of the women in the place.

Q. He was instructed not to have intercourse with anybody? A. Yes.

Q. Now, I get it: First, Burns was instructed to go in there and not have intercourse with anyone? A. Yes, sir.

Q. Then when he got in to see that somebody got three marked dollars? A. Yes, sir.

Q. After somebody got three marked dollars, blow the [381] whistle; that was his instructions?

A. His instructions was this, when he made an arrest in the place for him to blow his whistle if he wanted assistance. That is the way he was instructed.

Q. Oh, I see. In other words, he wasn't even ordered to make an arrest?

A. He was ordered to make an arrest. I instructed him that when he made the arrest in the place and if he wanted assistance, to blow his whistle.

Q. Let us go back. Let us get your instructions.

(Testimony of Clarence C. Caminos.)

Mr. Young: Why, the witness can't answer his questions completely.

By Mr. Dwight:

Q. Have you anything more to say in answer to that question? A. No, I have nothing further.

Q. You have answered the question?

A. Yes.

Q. So when Burns went in there he understood your instructions? A. Yes, sir.

Q. Did he say so? A. Yes, sir.

Q. In other words, he was not to have intercourse with anyone? A. Yes, sir.

Q. But he was to give somebody three marked dollars? A. Yes, sir.

Q. Then he was to arrest somebody and then blow the whistle? [382] A. Yes, sir.

Q. And then when the whistle blew, it was to be blown only if he needed assistance?

A. No, sir, if an arrest was made.

Q. If an arrest was made. In other words, when he made the arrest he blew the whistle?

A. When he made the arrest, to blow the whistle.

Q. It wasn't so much for assistance?

A. I would say for assistance.

Q. You remember testifying just two weeks ago, Mr. Caminos, about that?

Mr. Young: I object to counsel arguing with this witness that he switched his testimony.

(Testimony of Clarence C. Caminos.)

Q. I withdraw that. Do you recall, Mr. Caminos, testifying that you instructed Burns to go in and make a case of prostitution?      A. I do not.

Q. And when he made the case, blow the whistle?

A. I did not tell him to go in there and make a case. I told him that in case he got into the home and if he felt that an arrest should be made for some kind of violation, to place the people under arrest and to notify us, the other officers, by a blast of his police whistle.

Q. Did you tell him to take off his clothes?

A. I did not.

Q. Did you tell him to remain naked until you could get in?      A. I did not.

Q. Did he make any statement to you when he came to [383] the front door and was naked?

A. When he came to the door leading into the sitting room, I noticed that he had his undershirt on. I asked him where were the women that he had placed under arrest. He told me that they had got away from him and they tried to beat him up.

Q. Now, when you saw the door opened "Speed" Warren was standing there?      A. Yes, sir.

Q. You recall me asking you that question, "Who opened the door?" That was only two weeks ago.

A. Yes, I remember you asking me that question.

Q. What was your answer?

(Testimony of Clarence C. Caminos.)

A. I couldn't say who opened the door.

Q. Are you sure? A. I am sure.

Q. Did you say "Speed" Warren opened the door? A. I did not.

Q. You deny making that statement?

A. I deny making that statement.

Q. You never talked to Young about this phase of your testimony since January 24th?

A. The prosecutor?

Q. Yes. A. I did.

Q. Mr. Young called your attention to the fact, did he not, that Mr. Burns had testified he opened the door? A. I don't recall that.

Q. You don't recall that. Did he call your attention to the fact that you had testified Mrs. Warren had opened the door? [384]

A. Mr. Young didn't tell me that.

Q. He did not tell you that? A. No.

Q. Now, Mr. Caminos, those statements that I called your attention to were made on January 28th and 29th in this Court. You remember testifying in this Court? A. Yes, sir, I remember.

Q. And they were reduced to writing, were they not? A. Yes, sir.

Q. You deny making the statement that "Speed" Warren opened that door?

A. Yes, sir, I deny making that statement.

Q. You say that you do not know who opened the door?

A. I do not know who opened the door.

(Testimony of Clarence C. Caminos.)

Q. "Speed" was in front?

A. She was standing in that screened porch.

Q. What was the first word Mrs. Warren said to you?

A. The first word Mrs. Warren told me, "What is this all about, Caminos?"

Q. That is the first thing she said?

A. Yes, sir.

Q. Then what did you say?

A. I told her she was under arrest and she knew what it was all about.

Q. That is what you told her?                   A. Yes.

Q. Now, do you remember testifying on January 29th,—28th that you arrested Mrs. Warren because the girls got away?

A. I didn't exactly arrest Mrs. Warren, being that the girls got away. [385]

Q. Isn't that what you testified to under oath?

A. I don't remember.

Mr. Young: Counsel has the statement. It is not a proper foundation. The witness has a right to see the statement to see whether or not he has made it. A proper foundation has not been made for impeachment. If counsel has the statement to show this witness, the witness has a right to see that statement.

Mr. Dwight: May it please the Court, I have a perfect right to call the attention of the witness to an inconsistent statement, if at such a time and place he made such a statement. If he made that

(Testimony of Clarence C. Caminos.)

statement, it will be produced to impeach his testimony.

(The last question and answer were read.)

By Mr. Dwight:

Q. Now, Mr. Caminos, you got to the front door first, did you say?      A. Yes, sir.

Q. And how many people pounded on that door?

A. From the outside?

Q. Yes.      A. Two people.

Q. How many times did you pound?

A. Once.

Q. Just one blow?

A. With my—I didn't strike it with my fist; I struck it with my shoe.

Q. How many times did Wah Choon Lee pound on that door? [386]      A. I couldn't say.

Q. Did he pound on the door?      A. Yes, sir.

Q. You only kicked once?

A. I only kicked once.

Q. You recall *testify* that there were about five or six blows on the door and finally you looked down, you said, "Hey, this door don't open in, it opens out;" you remember testifying to that?

A. I remember testifying.

Mr. Young: Objected to as leading. It is a double question. Let him separate the question. He is assuming one thing and asking him.

The Court: The witness has already answered. (To the witness.) You understood that question?

A. Yes, I understood that question.



(Testimony of Clarence C. Caminos.)

By Mr. Dwight.

Q. In other words, Mr. Caminos, you testified on the 29th or 28th of January that there were five or six blows on that door?

A. No, sir, I did not testify.

Q. You deny making that statement?

A. Yes, sir.

Q. You remember this man (indicating) was the Court Reporter?

A. Yes, sir.

Q. Now, you say there was only one blow?

A. One blow by myself.

Q. How many blows by anybody else?

A. I am sure that Wah Choon Lee struck the door once [387] with his feet.

Q. With his feet?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. You were watching that?

A. Well, I couldn't say—I wouldn't say I was exactly watching him and not watching my part, but I am sure he kicked that door once with his feet.

Q. How about pounding?

A. I don't remember making that statement and I don't remember.

Q. I am not asking you if you made the statement. Do you remember if he pounded on the door?

A. No, sir.

Q. So I understand from you now you kicked the door with this rubber sole on it?

A. Yes, sir.

(Testimony of Clarence C. Caminos.)

Q. You looked over and saw Wah Choon Lee kick once with his leather-soled shoes? A. Yes.

Q. Then you ceased operations and you told Wah Choon Lee that the door opened out instead of in? A. Yes, sir.

Q. When did you discover that?

A. After that one kick.

Q. After that one kick you say Wah Choon Lee then reached up and pulled it?

A. Grabbed the metal part of the door.

Q. And pulled it? [388] A. And pulled it.

Q. You remember on the 29th you didn't say anything about the hiding and crouching business?

A. On the 29th they just asked me the question. They did not tell me to go out there and perform.

Q. Didn't I ask you quite a few questions?

A. Yes.

Q. You call demonstrating, Wah Choon Lee went up like this (illustrating), pulled and you thought he fell back? A. I didn't say that.

Q. Now, you say he was pulling, his *hand* were shaking and he fell back?

A. I made that statement; he gave a loud yell and he pulled back.

Q. You made that statement on the 29th?

A. Yes.

Q. Was Captain Levi right back of you all the time?

A. To the best of my knowledge, he was in the back of me.

(Testimony of Clarence C. Caminos.)

Q. And when you first went to the door, did you leave that front door and go somewhere else and then go back to the front door?

A. When I got to the front door and Wah Choon was knocked out, I looked back towards Captain Kalauli—towards Wah Choon and I noticed Captain Kalauli holding Wah Choon, so I turned back towards the house, facing the door. I stayed there for a while, while I instructed the other officers what to do, then Captain Kalauli told me to “Come here” and meantime I should say I was about six or seven [389] feet away from the door towards the right. Captain Kalauli told me to handle Wah Choon Lee, the deceased, while he would go out and get a car to get him to the hospital.

Q. Then you went back to the door?

A. Yes, sir.

Q. Did you hear any noises? Was that the time you heard some noises at the door?

A. That is when we were running up to the front entrance; that is when I heard the commotion.

Q. When was that?

A. I heard the commotion and Burns said, “I will have you arrested for assaulting a police officer.”

Q. Burns said, “I will have you arrested for assaulting a police officer”?

A. Yes, sir.

(Testimony of Clarence C. Caminos.)

Q. You heard Burns say that? A. Yes, sir.

Q. That was before you folks got to the door?

A. We were on our way to the door.

Q. You were on your way to the door, that is when you heard that statement? A. Yes, sir.

Q. Didn't you say, "Open up, police officers"?

A. I did.

Q. When did you say that?

A. While I was running up to the front door.

Q. Before you even got to the front door you said "Open up, police officers"?

A. As I got from the road on the concrete walk, heading to the front door, I said, "We are police officers, [390] open up the door;" something similar to that.

Q. "We are police officers, open up".

A. The door didn't open up right then. I kicked the door; Wah Choon Lee kicked the door. I said, "Don't kick the door because the door opens out." He grabbed the metal part, stood there for a couple of seconds. He was thrown back towards Captain Kalauli. When I glanced over my left, I noticed Captain Kalauli holding Wah Choon Lee. When I turned back towards the entrance I noticed the door was partly opened and "Speed" Warren was standing right on the screen porch that is on the front of the home and Officer Burns at the center of the door leading into the sitting room.

Q. Now, Mr. Caminos, you have been after "Speed" for a long time, haven't you?

(Testimony of Clarence C. Caminos.)

A. I wouldn't say that I have been after "Speed" for a long time.

Q. When was Mrs. Warren ever arrested for any crime—I mean not arrested, convicted?

Mr. Young: I object as still calling for a conclusion of this witness. It isn't shown he has any peculiar knowledge as to when a person was convicted. He is not competent to testify to that.

The Court: If you will qualify that, "if you know of your own knowledge."

By Mr. Dwight:

Q. Do you know of your own knowledge whether Mrs. Warren was ever convicted of any offense?

A. Once.

Q. When? [391]

A. During the old regime for liquor violations.

Q. Convicted?

A. To the best of my knowledge, she was convicted in Judge Plemer's Court in the District of Wahiawa, Honolulu, this Island.

Q. That was for some liquor violation?

A. That was for some liquor violation.

Q. That was way back in the good old days of prohibition? A. Just before the new regime.

Q. What do you mean by the "new regime"?

A. The Chief of Police.

Q. Oh, I see, but that is way back in the days of Charlie Rose? A. Sheriff Gleason.

Q. Sheriff Gleason. Can you estimate the time?

A. Ten years.

Mr. Young: I don't know.

(Testimony of Clarence C. Caminos.)

By Mr. Dwight:

Q. In other words, the only record, the only crime that you know that "Speed" was ever convicted of in the Territory of Hawaii was some liquor violation?

A. To the best of my knowledge.

Q. And that was way back before prohibition went out of existence?

A. Well, just before prohibition went out.

Q. The repeal? A. Yes, sir.

Q. That was about ten years ago?

A. I think it was in 1929, between 1929 and 1930. [392] I couldn't exactly say.

Q. That was the only thing you knew about her?

A. Yes, sir.

Q. You also knew of your own knowledge, did you not, that Mrs. Warren had never been convicted of running a disorderly house or house of ill fame or house of prostitution. Do you know that from your own knowledge?

Mr. Young: I object to that as immaterial, not proper cross-examination and calling for knowledge of this witness in a field he has no knowledge.

Mr. Dwight: He knows of his own knowledge.

The Court: Objection overruled. It is proper cross-examination.

By Mr. Dwight:

Q. Can you answer that yes or no?

A. No, sir.

(Testimony of Clarence C. Caminos.)

Q. She has never been convicted?

A. To the best of my knowledge.

Q. And you left on the evening of August 3rd with your vice squad to raid "Speed" Warren on that date with Officer Wah Choon Lee?

A. From the vice squad; the other men were from the District of Wahiawa.

Q. Now, as soon as you heard that whistle, did you run? A. Yes, sir.

Q. Pretty fast? A. As fast as I could.

Q. As fast as you could? A. Yes, sir. [393]

Q. And you were about 60 feet away?

A. About sixty feet away.

Q. Now, when did you look up at this corner and see a wire connected to that hinge?

A. Just before—at the place after the door was opened.

Q. After the door was opened? A. Yes, sir.

Q. Now, when you rushed up to that door you went there, as you say, as fast as you could possibly run? A. Yes, sir.

Q. You gave it a kick and things happened rather fast? A. Yes, sir.

Q. Now, when did you observe this metal mat?

A. I observed this metal mat that same evening.

Q. You mean on your way up, in all your haste, you glanced down and observed the mat?

A. No, sir, after Wah Choon Lee, the deceased, was taken to the hospital and I was standing there I flashed my light and I noticed that I stepped on a steel mat there at that time.

(Testimony of Clarence C. Caminos.)

Q. That was the time that you noticed it after Wah Choon Lee had been taken away?

A. Yes, sir.

Q. You didn't notice it when you ran up to the door?

A. No, sir.

Q. This mat is one of those metal things to scrape your mud off?

A. Yes, sir.

Q. That is the kind you buy down at Lewers & Cooke, [394] from Lewers & Cooke's establishment?

A. You can buy them in any hardware store.

Q. Isn't it a fact, Mr. Caminos, you did not even know what happened to Wah Choon Lee until Captain Levi called you back there?

A. Yes, sir, that is right.

Q. You didn't know what happened?

A. I didn't know what happened.

Q. And when you saw Burns standing by the living room door when you opened the door, you say Burns had his undershirt on?

A. I am sure he had his undershirt on. I am sure of that.

Q. And you are positive now, Mr. Caminos, that when you saw Mrs. Warren you said to her, "You are under arrest; you know what it is all about?"

A. Yes, sir.

Q. Your statement that you made on January 29th to the effect that you told "Speed" to come along with you because the girls had gotten away is not true?



(Testimony of Clarence C. Caminos.)

Mr. Young: It is not shown that the witness made that statement. I object to it.

Mr. Dwight: Withdrawn.

The Court: Objection will be sustained. Objection withdrawn.

By Mr. Dwight:

Q. Do you recall making that statement?

A. After she was placed under arrest she asked me to get dressed. I allowed her to get dressed. After I was about to go to the Police Station at Wahiawa, then I told [395] her to come along.

Q. You told her twice; once you told her she was under arrest and the next time you told her that she was to come along with you?

A. After she got dressed I told her to come along; after she was arrested she did not want to come out in the clothes she was in.

Q. When the door was opened you talked to "Speed" Warren? A. Yes, sir.

Q. After that conversation she asked to get dressed? A. Yes, sir.

Q. She started up the stairs? A. Yes, sir.

Q. You sent a police officer up there?

A. Yes, sir.

Q. As far as you know, what was the name of that officer? A. Officer Yuen.

Q. Officer Yuen went up there and as far as you know accompanied "Speed" until she came down dressed and went with you to the Police Station? A. Yes, sir, and also Officer Burns.

(Testimony of Clarence C. Caminos.)

Q. Also Officer Burns? A. Yes, sir.

Q. When did you first know that Wah Choon Lee was dead?

A. When I arrived at the police headquarters at Wahiawa.

Q. How long afterwards?

A. It might have been twenty minutes afterwards; I couldn't exactly say. [396]

Q. Did you learn where he died? A. No, sir.

Q. Don't you know he died at the hospital?

A. I couldn't say he died at the hospital. The only instructions I got were from Captain Kalauli that he had passed away; that he died at the hospital or on the way to the hospital. That I couldn't say.

Q. Now, when the man was lying down on the ground, did you let him lie there, he was sitting up or what?

A. Part sitting up, leaning against Captain Kalauli's hands; he had hold of him at the back.

Q. He was sitting up?

A. Well, about forty-five degrees, lying this way (demonstrating).

Q. Is that the first raid that Wah Choon Lee had ever been on to your knowledge?

A. No, sir.

Q. Now, Mr. Caminos, isn't it a fact that you sent Burns in to try to make a case of prostitution?—

(Testimony of Clarence C. Caminos.)

Mr. Young: Objected to as being asked and answered about three times. It was put in the same way about three times.

Mr. Dwight. Let me finish my question. (To the Reporter) Can you give me the half?

(The unfinished question was read.)

By Mr. Dwight:

Q. (Continuing) and when you, under your instructions to him when he had the three *dollas* marked money given to the girl, his clothes undressed, he was to blow the whistle and you were to come in? Isn't that the fact? [397]

A. My instructions was never given to Burns to have his clothes taken off.

Q. Well, we will put his clothes back on.

A. My instructions was this, when he got into the house and he felt that he had evidence enough to make an arrest to blow his whistle; that we would come in to assist him.

Q. Then you deny that you sent him in there to get what he would consider sufficient evidence, then to blow the whistle so you folks could make the arrest?

A. If he had evidence enough, to make the arrest, then notify us by blowing the whistle.

Q. Then you would make the arrest?

A. No, he make the arrest and we come in to assist.

(Testimony of Clarence C. Caminos.)

Redirect Examination

By Mr. Young:

Q. You stated when you came into the walk you stated that you were police officers?

A. Yes, sir.

Q. Did you state that more than once?

A. Twice.

Q. What kind of voice did you say it in?

A. In a loud voice.

Q. That was before you reached the door?

A. Yes, sir.

Q. Now, the defendant here might have been convicted of some other crime that you might not have known, is that correct? A. Yes, sir.

[398]

Q. You are only testifying from what you know? A. Yes, sir.

Q. And you stated on cross-examination, I believe, that you didn't know what happened to Wah Choon Lee until you looked back? A. Yes, sir.

Q. And everything you have testified to about seeing him you actually saw that and that is correct? A. Yes, sir.

Q. And everything you have testified to here is the truth and nothing but the truth?

A. Yes, sir.

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. He is presumed to be telling the truth.

The Court: Objection overruled.

(Testimony of Clarence C. Caminos.)

Mr. Young:

Q. Objection overruled. What say you?

A. To the best of my knowledge that was the truth what I stated before you gentlemen.

Mr. Young: No further redirect examination.

Mr. Dwight: May I be permitted to reopen cross-examination for just one question?

The Court: You may.

### Cross Examination

(Continued)

By Mr. Dwight:

Q. Referring, Mr. Caminos, to this sisal tree over here (indicating on Ex. "A"), what side of that sisal tree were you standing on? Come down here.

A. Stepping down to Ex. "A" and (indicating) I was standing about here (indicating) to the sisal tree. [399]

Q. Well, indicate.

A. Right here (indicating on Ex. "A"); right close, on the outside.

Q. On the outside of the sisal tree?

A. Yes, sir.

Q. From that point on the outside of the sisal tree can you see the front door of Mrs. Warren's house?      A. Yes, sir.

Q. You ever notice this high hedge over here (indicating on Ex. "A")?      A. Yes, sir.

Q. Does that interfere with your view?

(Testimony of Clarence C. Caminos.)

A. If I was standing there, I could not see, but if I was kneeling down I could see.

Q. Now, you are kneeling down?

A. There were times I was standing and times I was kneeling.

#### Redirect Examination

By Mr. Young:

Q. Have you observed this place since that time?           A. No, sir.

By a Juror (Mr. Kinney):

Q. About this metal plate on the door, is it flush, thick or thin, or has a place to grab?

A. Yes, on this part it is tacked (indicating on Ex. "L"); window (indicating); on this part it is loose (indicating).

Q. It is thin?           A. It is thin.

Q. But loose? [400]           A. Loose on the top.

Q. Loose enough—

A. Loose enough that you could put your fingers in.

By the Court:

Q. What material is that made out of, if you know?

A. I would say a copper sheet, copper metal.

#### Recross Examination

By Mr. Dwight:

Q. You did not know it was a copper sheet until you saw it down at the Police Station?

(Testimony of Clarence C. Caminos.)

A. Why I saw it was a copper sheet, I noticed it was brown.

Q. Didn't you see it down at the Police Station? That is why you knew it was?

A. No, at the home after the thing happened.

Q. A few hours afterwards?

A. A few minutes after that.

The Court: Any further questions?

By Mr. Dwight:

Q. Didn't you know that that door was painted brown on the outside? A. No, sir.

Q. Haven't you looked at it down there at the Police Station?

A. I admit I noticed the door at the evidence room.

Q. Haven't you noticed it was painted brown?

A. No, sir.

Q. But you knew it had a brown color?

A. I couldn't say it was painted brown; to the best of my knowledge at that time, I thought it was a copper [401] sheet, metal sheet, just like you see.

Q. You used your flashlight to find that wire?

A. I used my flashlight. I flashed it on the hinge. I noticed there was an electric wire soldered on the top part of the hinge.

Mr. Dwight: That is all.

By a Juror (Mr. Kuhlman):

Q. What way does the door swing, looking out?

A. It swings out.

(Testimony of Clarence C. Caminos.)

Q. That is, if you are in the house, it swings out, looking away?      A. Yes.

Q. Looking at the door, looking in, which side of you are the hinges?      A. On my left now.

#### Reredirect Examination

By Mr. Young:

Q. To your best recollection, this appears to be a copper plate?      A. Yes, sir.

Q. And you don't recall seeing any paint?

A. No, sir.

The Court: Any jurors have any questions?

By a Juror (Mr. Borden):

Q. How would this door open shown on this picture (referring to Ex. "H")?

A. I am facing towards the door; the door opens out this way (indicating). If I was inside, then it would open out towards my right (indicating on Ex. "H").

The Court: That is all. Witness excused. [402]

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Mr. Young: Does your Honor desire any recess?

The Court: I would prefer to go until quarter to twelve.

Mr. Dwight: Take a five-minute recess. I have *have* been going steady.

The Court: Court will take a short recess.

(A brief recess was taken.)



Mr. Dwight: May it please the Court, as I was leaving the Reporter's office several of the jurors stated that they would like to view the place and I want to report that to the Court at this time.

Mr. Young: I think it is improper for counsel to take a communication from the jury in the absence of this Court. The proper time has not come for that. Counsel should not communicate this request. I submit it is improper procedure.

Mr. Dwight: That is what I term chicken feed, made here for what purpose. The jurors have a right to question the witness; they have a right to come in here; they have a right to view the place. As I was rushing in from Mr. Clark's office, they said they would like to see the place. I said, "All right." I came right in and communicated it to counsel.

Mr. Young: I have no objection but just as an officer it is not the practice for any attorney to communicate with the jury. I am not criticizing the attorney. This is not the right procedure.

Mr. Dwight: I did it because it was my duty. [403] It was proper for me to do it. If I withheld it, then I would be violating my oath. I ask counsel's remarks be expunged from the record as prejudicial to the defendant.

The Court: The Court will disregard any remarks by either attorney in this respect and expunge them from the record. Any of you have any objection?

(There were none.)

Mr. Young: This is not the right time to take this up. I haven't finished my case.

The Court: The Court will keep that in mind. At some convenient time we will on this request view the premises.

Mr. Young: May this exhibit be received, the diagram that the Captain drew?

The Court: Any objection?

Mr. Dwight: My general objection. It is only packing the records with a lot of useless papers, therefore immaterial.

Mr. Young: I object to counsel's remarks.

The Court: The Court overrules the objection.

Mr. Young: I ask the jury be instructed to disregard the remarks of counsel and comment upon any of the evidence, other than his answer.

Mr. Dwight: May counsel's request include also his remarks?

The Court: The jury will disregard all arguments or counsel; disregard them and forget them and keep your attention on the evidence and the law. [404]

Mr. Young: Has the witness been sworn?

The Court: Not that I know of.

FRANCIS APOLIONA,

called as a witness for the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Francis Apoliona.

Q. What is your occupation?

A. I am a policeman stationed at Wahiawa.

Q. Were you a policeman on August 3, 1937?

A. I was.

Q. Do you know Wah Choon Lee? Did you know Wah Choon Lee? A. Yes.

Q. And who is he?

A. He was a policeman assigned to the vice squad.

Q. Did you see him on that date? Do you recall August 3rd?

A. Yes, sir, I saw him in the Wahiawa Station.

Q. You saw him in the Wahiawa Station?

A. I saw him in the Wahiawa Station.

Q. Did you go any place with him that night?

A. That night Wah Choon Lee in company with six other police officers went on a raid to "Speed" Warren's place.

Q. Where did you go?

A. I was stationed on Kuahiwi Street in the back of [405] "Speed" Warren's house on the road there, to cover anybody there that left the premises.

Q. Was anyone else there with you?

(Testimony of Francis Apoliona.)

A. Officer Chun was there with me.

Q. Officer Chun. Now, while you were there, did you do anything, hear anything or see anything?

A. Well, at about nine o'clock, or a little before or a little after, I heard a police whistle and I was instructed——

Mr. Dwight: Objected to, and move to strike anything he has to say about his instructions.

The Court: Nothing to strike so far.

Mr. Dwight: I object to any hearsay going in.

The Court: Exclude from your testimony any statements made to you by anyone, unless it is in the presence of the defendant.

By Mr. Young:

Q. Now, you heard the whistle blow?

A. Yes, sir.

Q. Did you do anything?

A. I ran into the yard to cover the place.

Q. Whose yard?

A. "Speed" Warren's yard.

Q. What did you do after you got there?

A. I stayed in the back to see that nobody left the place.

Q. Did you see anything?

A. No, sir, I did not see anything.

Q. Did you see anybody? A. I did not.

[406]

Q. Just stayed in the back? A. Yes, sir.

Q. Did you see Wah Choon Lee? A. Yes, sir.

(Testimony of Francis Apoliona.)

Q. Where did you see him next?

A. I saw him at the front, right at the hedge, when I came for him with another officer.

Q. What was he doing?

A. Lying on the ground.

Q. Did you do anything with respect to him?

A. I picked him up and put him in a car and took him to the hospital.

Q. What part of the car was he put in?

A. Back seat.

Q. Who got in the back seat?      A. I got in.

Q. Was he conscious or unconscious?

A. I am not qualified to make any such statement but I can say he was warm. As we proceeded to the hospital he proceeded to get cold.

Q. Before you got to the hospital was he cold?

A. Yes.

Q. What hospital are you talking about?

A. Post Hospital.

Q. How long did it take you to get there?

A. Five minutes.

Q. What did you do when you got to the Post Hospital?

A. We got him off the car and saw the doctor.

Q. Will you know that doctor if you saw him?

Mr. Dwight: We will admit that. [407]

Mr. Young: Will you admit that is Doctor Taylor who is outside?

Mr. Dwight: Yes, sir.

(Testimony of Francis Apoliona.)

By Mr. Young:

Q. You delivered the body of Wah Choon Lee to Doctor Taylor?      A. Yes, sir.

Q. Did you do anything else?

A. We stayed around and I collected his property.

Q. Did you see anything that happened in front of this house after the whistle blew?

A. No, sir, I was in the back all the time.

#### Cross Examination

By Mr. Dwight:

Q. Did you see Caminos come around the back?

A. No, sir.

Mr. Dwight: I have no further cross-examination.

The Court: That is all. Excused.

Mr. Young: Doctor Taylor, please.

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#### JAMES S. TAYLOR,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Captain James S. Taylor.

Q. You are attached to the Army?

A. Medical Corps.

(Testimony of James S. Taylor.)

Q. You are attached to the Army Medical Corps. You [408] are a duly licensed doctor, physician and surgeon?      A. I am.

Mr. Young: Do you admit the doctor's qualifications?

Mr. Dwight: I will admit the doctor's qualifications.

The Court: Let the record so show.

By Mr. Young:

Q. There is evidence, the last witness testified that he delivered a body to you of a male on August 3, 1937, sometime in the evening. Did you see this witness that just left the stand?

A. Yes, sir, as I came in the door.

Q. Do you recognize him?

A. He was one that brought the body to me at the hospital.

Q. Did you look at that body after it came in there?      A. Yes, sir, after it came in.

Q. Was the person dead or alive when you saw him?

A. The person was dead when I saw him. It was immediately after I saw him.

Q. At that time what time was that?

A. 9:20 p. m.

Q. When was that?      A. August 3, 1937.

Mr. Young: No further questions. Thank you, doctor.

Mr. Dwight: That is all, doctor. [409]

## KAM YUEN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Kam Yuen.

Q. And what is your occupation, Mr. Yuen?

A. Police Officer.

Q. City and County of Honolulu?

A. Yes, sir.

Q. You are a duly commissioned police officer?

A. Yes, sir.

Q. How long have you been a police officer?

A. About six months.

Q. About how long?           A. Six months.

Q. Six months?           A. Yes, sir.

Q. Where do you live in town?

A. 1134 Gulick Avenue.

Q. Were you a police officer on August 3, 1937?

A. Yes, sir.

Q. Do you recall whether on that date you had any special duty?           A. Yes, sir.

Q. What was that duty?

A. To go in that raid.

Q. Who was the head of the raid? I mean what officer, what police officer was in charge of you in it.           A. Captain Caminos.

Q. And where did you first see him that day?



(Testimony of Kam Yuen.)

A. At the Wahiawa Court House.

Q. And where did you first receive your instructions as to this raid?

A. At the Wahiawa Court House.

Q. Did you accompany any officer at any place?

A. Yes, sir.

Q. Where did you go? Will you please tell this jury?

A. From the Wahiawa Court House we left the court house to "Speed" Warren's.

Q. You went to "Speed" Warren's place?

A. Yes, sir.

Q. Did you go to "Speed" Warren's place?

A. We did.

Q. What part of the house did you go to?

A. At the front.

Q. Who was with you, if anyone?

A. Captain Caminos, Captain Kalauli, Officer Wah Choon Lee and I.

Q. Now, where *where* you just before you went to the front door of the house, just immediately before?

A. Who do you mean, Wah Choon?

Q. No, you. A. Please repeat the question.

Q. Where were you just before you—I will withdraw the question, your Honor. Who all went to the front door of the house?

A. The two captains, Wah Choon and I.

Q. Who got to the door first?

A. Captain Caminos and Wah Choon.

Q. And where were you? [411]

(Testimony of Kam Yuen.)

A. Right in the back of them.

Q. Now, while you were standing— Now, while you were at the door did anything happen there when you got to the door?      A. Yes, sir.

Q. Will you please tell us what you saw or heard?

A. Well, when we got to the door Captain Caminos announced that we were police officers and asked "Speed" to open the door. The door was being opened. We heard a scuffling sound in there, that is, one of the officers was in there having a little trouble with "Speed".

Mr. Dwight: Well, I am going to move to strike that answer as purely the conclusion of this witness.

Mr. Young: I have no objection to it being stricken.

The Court: That may be stricken.

By Mr. Young:

Q. Do you know of your own personal knowledge what was going on in there?      A. Yes.

Q. That it was "Speed" and the officer?

A. Yes.

Q. How do you know that?

A. When the door opened "Speed" was the only one there.

Q. When the door opened you saw the officer?

A. Yes, I recognized Burns.

Q. As far as "Speed" was concerned, did you know whether or not that was she before the door opened?      A. No, sir.

(Testimony of Kam Yuen.)

Q. You did not. You just suppose that because [412] when the door opened you saw her?

A. That is my conclusion.

Mr. Young: I have no objection to that being stricken.

Q. You say that Caminos announced you were police officers and opened the door, something to that effect? A. Yes, sir.

Q. What, if anything, happened before that on the outside?

A. He started to kick the door. Captain Caminos noticed the door opened outward. He told him not to kick so Officer Lee grabbed hold of the door and started to pull the door.

Q. Will you show just how Officer Lee grabbed that door?

A. There is a metal plate on the door.

Q. I will refer you to Prosecution's Exhibit——

Mr. Dwight: He can testify from his own recollection.

A. Anyway, the top of the plate is about this high. I saw him reach up with both hands and try to pull the door out. (demonstrating)

By Mr. Young:

Q. You saw him grab like that? A. Yes, sir.

Q. What happened, if anything?

A. He let out a scream or yell.

Q. Then what? A. He fell backwards.

Q. Did you see where he fell? A. Yes, sir.

[413]

(Testimony of Kam Yuen.)

Q. Where did he fall?

A. Into Captain Kalauli's arms.

Q. Captain Kalauli caught him?

A. Yes, sir.

Q. Where were you standing at this time?

A. Right back of Captain Caminos.

Q. Back of Captain Caminos? A. Yes.

Q. Did you touch that door at any time whatever? A. No, sir.

Q. Before the deceased touched it, Wah Choon Lee? A. No, sir.

Q. Then after the deceased, Wah Choon Lee, fell back, what happened, if anything?

A. The door opened.

Q. The door opened? A. Yes, sir.

Q. What did you see, if anything?

A. I saw "Speed" Warren standing right at the opening.

Q. Which way did the door open, in or out?

A. Opens out.

Q. Opened out? A. Yes, sir.

Q. Now, do you know what kind of surface Wah Choon Lee was standing on at the time?

A. There is a metal mat there.

Q. What kind of a metal mat?

A. One of those door mats, that is, mat of metal, iron.

Q. Where was that mat located with reference to the [414] door?

A. At the foot of the door on the outside.

(Testimony of Kam Yuen.)

Q. Was Wah Choon Lee standing on that?

A. Yes, he was.

Q. When was he standing on that?

A. At the time he arrived, at the time he reached the door.

Q. When he grabbed that plate?

A. Yes, when he grabbed that plate until he fell.

Q. Now, after the door opened, did you go inside the house?           A. Yes, I did.

Q. And what did you do, if anything?

A. Well, Captain Caminos ordered me to assist Officer Burns, so I went in and I asked Burns if he needed any help.

Q. Did you know the defendant, "Speed" Warren?           A. I didn't know her.

Q. Would you know her if you saw her again? Have you ever seen her before?   A. Yes, I have.

Q. Did you see her there that night?

A. Yes, I did.

Q. Is she in Court now?

A. I wouldn't recognize her now. I haven't seen her for so long.

Q. Do you know—I withdraw the question. Did you at any time go upstairs that evening?

A. Yes, sir, I did.

Q. Did you go upstairs with anybody? [415]

A. No, I went alone.

Q. Was anyone upstairs when you got up there?

A. A couple of soldiers and "Speed" Warren.

Q. Was "Speed" Warren up there?

(Testimony of Kam Yuen.)

A. Yes, sir.

Q. What did you do, if anything, up there?

A. Well, Captain Caminos asked me to go up there and bring that woman down, so I went up there to look for the woman.

Q. What woman did he tell you?

A. He didn't tell me. He said a woman ran upstairs.

Q. Do you know anything else about this incident out there?

A. What is that question?

Q. I will withdraw the question. Did you finally come down from upstairs?      A. Yes, I did.

Q. What did you do then?

A. Stand guard at the premises.

Q. Stand guard at the premises?      A. Yes.

Mr. Young: No further questions.

#### Cross Examination

By Mr. Dwight:

Q. What do you mean by "standing guard"?  
What did you do?

A. We couldn't find the woman. I stayed at the front entrance to see that nobody escaped.

Q. You mean out in the street? [416]

A. No, in the yard.

Q. You stood on the walk?

A. On the lawn.

The Court: It is now twelve o'clock.

(Testimony of Kam Yuen.)

Mr. Dwight: Just a moment. At this time may we take a continuance until tomorrow morning on account of the condition of the defendant.

The Court: Any objection?

Mr. Young: Your Honor knows the situation. I submit whatever your Honor's ruling is agreeable to the Territory.

Mr. Dwight: May I suggest this, that before the jury is dismissed for the day that we make some arrangements about going out to view the premises. I would suggest tomorrow morning.

Mr. Young: If your Honor please, my same objection is in order. I have a right to finish my case before the jury is allowed to go to the premises. This is my objection: Counsel has no right in the middle of my case to step up and make any statement. When I have rested he may.

Mr. Dwight: May it please the Court, this Court conducts the trial and not the prosecuting counsel, but this Court can say when we can go and view the premises. The practice of this Court has been to view the premises at the most convenient time. They have viewed premises after all the evidence has been in. I just suggest, tomorrow being Friday, we could use up tomorrow morning. [417]

The Court: Let us take up this continuance.

Mr. Dwight: Upon the grounds already stated and the affidavit of the doctor.

The Court: She is ill now?

Mr. Dwight: I have just determined that fact.

(Testimony of Kam Yuen.)

The Court: All right, the Court will continue the matter until nine o'clock tomorrow morning for the reasons stated by Mr. Dwight and letter of the doctor. The jury is excused until that time. The witness is also ordered to be back here tomorrow morning at that time.

Mr. Dwight: Will the Court take up the matter of viewing the premises?

The Court: The Court will not order a view at this time. Take it up later. In addition to the reason advanced by Mr. Dwight of the sickness of the defendant Warren, the Court was informed by one of the jurors that Juror Roberts was also sick and suffering from influenza. For these two reasons the Court grants the motion to continue. Report tomorrow morning at nine o'clock for further trial of this case. The jury is under the same instructions.

(A recess was taken until Friday, February 11, 1938, at nine o'clock a. m.) [418]

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Honolulu, T. H., Feb. 11, 1938.

(The trial was resumed.)

The Clerk: Criminal 14,332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren.

Mr. Young: Ready for the Territory. Stipulate the defendant and the jury are present, your Honor.

Mr. Dwight: I will so stipulate, your Honor.

The Court: Ready for the defense?



Mr. Dwight: Ready.

The Court: Let the record so show. Proceed with the examination of Mr. Yuen.

KAM YUEN,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Young:

Q. Mr. Yuen, you testified on direct examination something about the door that you saw Wah Choon Lee touch?      A. Yes, sir.

Q. Would you know that door if you saw it again?      A. Yes, I would.

Mr. Young: May I have Prosecution's Exhibit "H" for identification?

Mr. Dwight: May I have my same objection to the exhibition of that door to the witness?

The Court: There is no offer in evidence.

Mr. Dwight: I object to the admission.

The Court: Let the record show there is no exhibition of this exhibit to the jury.

Mr. Dwight: I mean exhibition to the witness, [419] for the reason this Court has already ruled that the evidence is absolutely inadmissible. I object to counsel exhibiting inadmissible secondary evidence to the witness.

(Testimony of Kam Yuen.)

The Court: Objection overruled. This exhibit, it is not in evidence, merely for identification, not shown to the jury.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. Will you take a look at Prosecution's Exhibit "H", marked for identification?

(Mr. Young handed the picture, Prosecution's Exhibit "H" for identification to the witness.)

Q. Do you know what that is?

A. The front door to—door of Ilene Warren's home.

Q. That is the way it looked on the night Wah Choon Lee grabbed the door?      A. Yes.

Mr. Young: I offer this in evidence, if the Court please.

Mr. Dwight: May the Court reserve ruling until after I have made my cross-examination?

The Court: Then, cross-examine.

#### Cross Examination

By Mr. Dwight:

Q. Mr. Yuen, you say you were up in the Police Station at Wahiawa with Officers Kalauli, Captain Caminos and Burns prior to the time you went to "Speed" Warren's house?      A. Yes. [420]

Q. And you listened in to the conversation between Caminos, Burns, yourself and the other offi-

(Testimony of Kam Yuen.)

cers about what you were supposed to do and what Burns was supposed to do?           A. Part of it.

Q. You didn't hear all the instructions?

A. I heard all of the instructions.

Q. You heard all of it?

A. Instructions, I heard all of it; you said conversations.

Q. Wasn't there instructions in all the conversation?           A. Yes.

Q. How did you get your instructions?

A. By conversation.

Q. You heard that conversation, did you?

A. Yes, I did.

Q. Where was Burns, was he sitting close to you at the time that you folks discussed this matter?

A. Quite close.

Q. Was Caminos sitting close to you?

A. Yes.

Q. Captain Kalauli?           A. Yes.

Q. You heard everything that Caminos said?

A. Yes.

Q. You heard everything that Burns said?

A. Yes.

Q. Now, was anything said at that conversation about not having a search warrant?

A. No. [421]

Q. You recall Captain Kalauli telling Captain Caminos that he had no right to raid without a search warrant?           A. No.

(Testimony of Kam Yuen.)

Q. You deny that statement was made?

A. I did not hear it.

Q. You didn't hear it? You don't know whether it was made or not?      A. No.

Q. Now, what did you hear Caminos tell Burns to do?      A. I don't quite remember.

Q. You don't remember?

A. It has been seven months since.

Q. Never mind looking at counsel. You have no recollection at all of what Caminos told Burns up in the Police Station?      A. No.

Q. Did you hear anybody tell Burns anything up there in the Police Station?

A. Captain Caminos and Captain Kalauli.

Q. You heard Captain Caminos and Captain Kalauli tell Burns something?      A. Yes.

Q. What did Captain Caminos tell Burns?

A. I don't remember.

Q. And you don't remember what Captain Kalauli told Burns?      A. No.

Q. What did Captain Caminos tell you?

A. Well, to go with him.

Q. To go with him? [422]

Q. You didn't hear anybody tell Burns to go into the house?      A. Somebody did.

Q. You don't know who said it?

A. Captain Caminos, I believe; I am not sure.

Q. You heard somebody tell Burns that?

A. Yes.

(Testimony of Kam Yuen.)

Q. What did they say to Burns?

Mr. Young: Object to this as being incompetent, irrelevant and immaterial, not a proper foundation for this statement. Counsel does not know who made the statement; furthermore, this is all hearsay.

Mr. Dwight: It all goes to what counsel has been getting at.

Mr. Young: This is a fishing expedition.

Mr. Dwight: I move to strike the remarks of counsel. This is legitimate cross-examination.

The Court: The jury is instructed to disregard the remarks of counsel.

(The last question was read.)

By Mr. Dwight:

Q. What was the language said to Burns?

A. They spoke in English.

Q. Now, what were the words used?

A. I don't remember.

Q. You remember it was telling Burns to go into the house?

A. Yes, I have a recollection.

Q. Have you any recollection as to what Burns was [423] to do inside the house? Was there any conversation in that regard?

A. Yes.

Q. Well, who did the talking?

A. The two Captains.

Q. Caminos? A. And Kalauli.

Q. Do you remember what Mr. Caminos said?

A. I don't remember exactly.

(Testimony of Kam Yuen.)

Q. Well, the substance of it, if you don't remember exactly, the substance of it?

A. Officer Burns was to give the signal when he was ready in there.

Q. Officer Burns was to give the signal when he found an offense committed in there?

A. Then he is to give the signal, which is a blast by his whistle.

(The last answer was read.)

Q. Was there any conversation about the nature of the offense, the crime that he was to blow his whistle for?

A. I don't quite remember that.

Q. You don't remember that? A. No.

Q. What in the world were you going down to "Speed's" for when you left the Police Station? What did you have in your mind?

A. Going on a raid.

Q. Going on a raid. You were going along to raid a person's house and you did not have a search warrant?

A. I don't know. I was going under instructions of [424] Captain Caminos and Captain Kalauli.

Q. All right. In other words, did you hear anything about planting three marked dollars on anybody? A. I don't remember.

Q. Did you see the three marked dollars?

A. I didn't; I haven't seen any money.

Q. Did you see any money passed between Captain Caminos and Officer Burns? A. No.

(Testimony of Kam Yuen.)

Q. You were present all the time?

A. Yes.

Q. And you were with Caminos all the time from the time you left the Police Station up to the front door of "Speed" Warren's house?      A. Yes.

Q. You never saw Caminos give Burns three marked dollars?      A. No.

Q. Or give him any instructions in that regard?

A. No.

Q. Did you hear Mr. Caminos say anything about taking off his clothes?

A. I didn't hear anything.

Q. Did you hear any specific instructions from Caminos not to have intercourse with anybody in that house?      A. I don't remember.

Q. You were listening?      A. I was.

Q. You were detailed to take part in this raid?

A. Yes. [425]

Q. You were listening to the instructions of Captain Caminos?      A. Yes.

Q. And you don't remember any of that conversation?      A. No.

Q. Now, Mr. Kam Yuen, where did you leave Mr. Burns, you and Caminos together part company with Mr. Burns on that night?

A. Muliwai Street at the railroad track.

Q. Muliwai Street at the railroad track?

A. Yes.

(Testimony of Kam Yuen.)

Q. You are familiar with this map—I think counsel has shown it to you—this map of Wahiawa. You never seen this map before (referring to Ex. “A”)?

A. No.

Q. This is Muliwai Avenue (indicating on Ex. “A”); this is the place that has been identified as Mrs. Warren’s home (indicating) “D”; you say you and Caminos and Burns parted at the railroad track here (indicating on Ex. “A”)? Pardon me; I made a mistake. That is not Muliwai Street.

A. At the railroad track, the street next to the court house.

Q. You are sure when you and Caminos and Kam Yuen got to this point (indicating)—I withdraw this question. You came up from the Police Station along this, the lower avenue (indicating on Ex. “A”)?

A. Yes.

Q. When you got to this point (indicating) you say Burns, Caminos and you separated?

A. Burns separated from us. [426]

Q. And you came around this way (indicating on Ex. “A”)?

A. Yes.

Q. You and Caminos?

A. Yes.

Q. How did Burns go?

A. Via the railroad track.

Q. Burns went up the railroad track?

A. Yes.

Q. Are you absolutely sure?

A. No, not absolutely sure.



(Testimony of Kam Yuen.)

Q. All I want is your definite reaction. All I want is the truth. A. I don't quite remember.

Q. Then did you come back over here with Caminos (indicating on Ex. "A")? A. Yes.

Q. Where did you stand in relation to Caminos? A. Well, just back of him.

Q. Just back of him. When you say "back of him", in what part of this area where you were standing? Will you come down here and indicate it, or maybe I can indicate it if you can see the map?

A. (Stepping down and indicating on Ex. "A") Somewhere right here.

Q. You were somewhere in the vicinity of this little green thing that is drawn like a tree and marked "Sisal plant"? A. Yes.

Q. In relation to that tree, where was Caminos standing?

A. Well, I don't remember the tree; it was quite dark. [427]

Q. It was quite dark?

A. It was a hedge or bush.

Q. In relation to that hedge or bush, the same position that we are standing now?

A. About the same position.

Q. And where is the bush? Where was the bush?

A. The bush was on the lefthand side.

Q. What do you mean by the "lefthand side"?

A. On this side (indicating).

Q. The bush was on this side? (Indicating) You are sure about that? A. Yes.

(Testimony of Kam Yuen.)

Q. And Caminos was in front and you were behind?      A. Yes.

Q. So you were about in this position? (Indicating)      A. About that vicinity.

Q. About that vicinity, and from where you were standing could you see Burns as he came along the road?      A. He went ahead of us.

Q. He went ahead of you and was he already in the yard before you got to the sisal plant?

A. I think he was.

Q. You think he was and you saw him? He went ahead of you, you say, and when you got to this sisal plant you say Burns was already in the yard?

A. I think so.

Q. You think so; you didn't see him in the street?      A. No, I did not.

Q. Did you look down the street to see him?

A. No. [428]

Q. You didn't see anybody on the street. Did you draw that to the attention of Captain Caminos there was nobody on the street at that time?

A. No.

Q. Captain Caminos was ahead of you and you were both alert in seeing that there was nobody on the street?      A. Yes.

Q. Then, Mr. Yuen, after you—when did you next see Burns?

A. In "Speed" Warren's home.

Q. You never saw Burns at all after that, after he got into the yard, until he was in "Speed" Warren's home?      A. Yes, sir.

(Testimony of Kam Yuen.)

Q. And you didn't see him knock at the door?

A. I didn't.

Q. You didn't see him walk up the walk toward the front door?

A. I don't quite remember; maybe I did after all.

Q. Maybe you did, maybe you did not, but you didn't see Burns walk up to the front door?

A. I don't remember.

Q. But you do remember the next time you saw Burns, that was the last time that you saw Burns that we have been discussing in this series, was some place that you remembered down here by this road (indicating on Ex. "A"); that is the last time you saw Burns; that is your testimony, is that right?

A. Come to think of it, I think I did see him again afterwards.

Q. Where, where did you see him again after this [429] point here (indicating on Ex. "A")?

A. Going in the yard.

Q. Going in the yard?

A. Yes, sir.

Q. When you say "going in the yard", what do you mean by that, what direction was he coming from when he was going into the yard?

A. Going toward the door, the front door.

Q. You saw him on the walk, walking in on this cement walk?

A. I am not sure; I think I did.

Q. You think he did?

A. I have a slight recollection of seeing him.

(Testimony of Kam Yuen.)

Q. You have a slight recollection of seeing him. Does that slight recollection tell you just what he was doing and where he was walking?

A. It doesn't; no.

Q. Then you didn't see him knock on the door; that is definite?      A. I don't remember.

Q. You don't remember. Well, anyway, from where you were standing by the sisal plant, could you see the front door of "Speed" Warren's house?

A. No, because I wasn't standing.

Q. You were kneeling?

A. Sort of crouching.

Q. So was Caminos crouching?

A. I don't remember.

Q. You were right alongside of him?

A. Right back of him. [430]

Q. He was in front. In other words, he was ahead of you when you were looking towards the "Speed" Warren house?      A. Yes.

Q. You don't remember whether he was crouching or standing?      A. No.

Q. You couldn't see the front door?

A. I could see part of it.

Q. What part of the front door could you see?

A. There is a light shining there and I could see the upper portion.

Q. How were you seeing that, through this bush?

A. Yes.

Q. And when you say "the upper portion of the door", how much of the upper portion of the door could you see? Just indicate to the jury.

(Testimony of Kam Yuen.)

A. Oh, about this much (indicating on Ex. "H").

Q. Indicating a point about there (indicating on Ex. "H"). How far up would you say that is, Mr. Yuen?

Mr. Young: The jury can see it on the picture.

A. Approximately; I might see more, I might see less.

By Mr. Dwight:

Q. And that is all you could see from your crouching position?

A. What I could remember seeing.

Q. And while you were in this crouching position, were you talking to Caminos, just sitting and waiting, that is what you were doing, isn't it? Were you just sitting there with Captain Caminos, crouching, talking [431] and waiting, is that right?

Q. You were waiting for a whistle to be blown?

A. Yes.

Q. You weren't concerned with what was going on on the sidewalk or on the street or on the front door?

A. No.

Q. You two were just waiting for a whistle to be blown? You were hiding and waiting for a whistle to be blown? That is correct, Mr. Yuen, isn't that right?

A. We were waiting for the whistle.

Q. Yes, that is what you folks were doing, hiding in these bushes and waiting for a whistle to blow, isn't that right?

(Testimony of Kam Yuen.)

A. I don't know whether they were hiding; I wasn't.

Q. Well, you certainly kept out of sight, didn't you?      A. I did.

Q. You did, and your brother officer was alongside of you, keeping out of sight?

A. I can't say because I don't remember their position.

Q. And you were sitting there, waiting for a shrill police whistle, isn't that right?      A. Yes.

Q. And was there any conversation up at the Police Station or on your way down here between Caminos and Burns and yourself about what that police whistle was for?

A. Sure, when the offense was committed in the house.

Q. When the offense was committed in the house. What offense?

A. I don't remember anything. [432]

Q. What is that?

A. I don't remember any mention of any definite offense.

(The last answer was read.)

Q. You don't remember anything about three dollars?      A. I don't remember.

Q. No conversation at all about it in your presence?      A. I don't remember.

Q. And there was no conversation at all in your presence about not having intercourse with anybody?      A. I don't remember.

(Testimony of Kam Yuen.)

Q. And there was conversation in your presence there at the police station or on the road down about Burns not taking his clothes off?

A. I don't remember.

Q. You don't remember. Did the Chief talk to you before you left Honolulu?

A. Chief Gabrielson?

Q. Yes. A. No, I was stationed there.

Q. Were you present when the Chief talked to Mr. Caminos? A. No.

Q. You weren't? A. No.

Q. Now, Mr. Yuen, from the time that the—  
By the way, how many blasts of this whistle did you hear? A. I think it was one.

Q. You think just one? A. Yes.

Q. And when you heard the whistle, what did you do? [433] A. We went forward.

Q. What do you mean by the "we"? Where do you get that "we"? A. I went forward.

Q. Anybody else go forward? A. No.

Q. You went with them? A. Yes.

Q. Who started to run first?

A. I don't remember.

Q. When you say they went, in what direction did you go? A. Toward the door.

Q. Toward the front door of Mrs. Warren's house? A. Yes.

Q. Did you go in a straight line or go up the street and turn in?

A. I don't quite remember.

(Testimony of Kam Yuen.)

Q. How did you run? You were in this position over here (indicating on Ex. "A"). Did you head in this direction to the front door or did you come around over here and go in here (indicating on Ex. "A")? A. I don't remember.

Q. You don't remember.

Q. In other words, you were excited when that whistle blew? A. I was not.

Q. You were not? A. No.

Q. Where was the deceased before that whistle blew? [434] A. With us.

Q. Right alongside of you?

A. I don't remember his exact position but he was somewhere around there.

Q. Close enough for you to see him?

A. Yes.

Q. Close enough for you to talk to him?

A. Yes.

Q. Was he also crouching and in the bushes?

A. I don't remember his position.

Q. You don't remember his position?

A. No.

Q. Now, you have no idea which way you came toward the door, whether you came straight in line with the light that you saw or whether you went around and came in this way (indicating on Ex. "A")? A. I don't remember.

Q. You say Mr. Caminos was ahead of you or behind you in racing to the door?



(Testimony of Kam Yuen.)

A. Probably in front.

Q. Well, do you know? A. No.

Q. You don't know? A. No.

Q. You don't know whether he was behind of your or in front of you? A. No.

Q. You don't know how he ran to the door?

A. No.

Q. But you ran pretty fast yourself? [435]

A. I don't remember.

Q. You don't remember. Do you remember walking to the door *water* that whistle blew?

A. No.

Q. Well, what did you do, run? A. Yes.

Q. You don't know how fast you ran?

A. No.

Q. And did you notice if your companions were also running, Mr. Yuen?

A. No, I did not notice them.

Q. You didn't notice that? A. No.

Q. Who got to the door first, do you remember?

A. I don't remember; I don't know.

Q. You don't know. Do you know which way the deceased ran from his hiding place to the front door? A. No.

Q. You don't. You don't know who got to the door first? A. No.

Q. And about how long did it take you to get to the door?

A. I can't say; a few seconds.

(Testimony of Kam Yuen.)

Q. You can't say; a few seconds. Well, how far away were you from that door when the whistle blew, in feet,—about the distance across this room?

A. I don't quite remember the distance.

Q. Well, can you give us the approximate distance, whether approximately the distance of this room, from that [436] side (indicating) to this side (indicating), the Waikiki to the Ewa side of this room? A. About that, slightly more.

Q. About that, slightly more.

Mr. Young: Slightly more, was that your answer? A. Yes.

By Mr. Dwight:

Q. How much more?

A. I can't tell you exactly in feet.

Q. And you ran to the door? A. Yes.

Q. Now, can you give me any idea of the number of seconds that it took you to get from where you were to the door? A. No, I can't.

Q. You can't. You said a few seconds a little while ago. You want to change that and withdraw that answer? A. No.

Q. What is that? A. No.

Q. You want to leave it this way, about a few seconds? A. Yes.

Q. You were crouched, ready, waiting for the whistle? A. Yes.

Q. As soon as the whistle blew, off you went for that door? A. Yes.

Q. That is exactly what happened?

A. Yes.

(Testimony of Kam Yuen.)

Q. And the distance that you ran was, you say, a [437] little bit further than from this wall, indicating the Waikiki wall of this court-room, to the Ewa wall of this court-room? A. Yes.

Q. You were already instructed——

A. Yes, sir.

Q. (Continuing) what you were to do inside? Get any instructions on that, what you were to do inside? A. To assist.

Q. What you were to do inside, what were your instructions? A. I don't remember.

Q. You don't remember your instructions?

A. No.

Q. What were you running to the door for?

A. Well, at that time I remembered my instructions.

Q. Oh, I see. You have forgotten them since then? A. Yes, sir.

Q. Were you a little bit frightened?

A. I don't remember.

Q. You don't remember. Were you a little bit excited at that time?

A. Not that I can remember of.

Q. Anyway you made a dash for the door?

A. Yes.

Q. About as fast as you could run?

A. Yes.

Q. And when you got there you saw—What did you see? A. The door was locked.

(Testimony of Kam Yuen.)

Q. You tried the door? [438]

A. I didn't.

Q. You didn't try the door?

A. I seen the other officers trying the door.

Q. What do you mean by "the other officers trying the door"? Were they trying to turn a knob, something like that?

A. No, they weren't trying the knob. I don't think there is any knob on that door.

Q. I am talking about your best recollection at the time you were closer up to the door and the door was closed.

A. When we got there the door was closed and Caminos——

Q. And Cominos——

A. (Continuing) Caminos hollered to "Speed" to "Open the door, we are police officers."

Q. How many times did he say that?

A. Three times, I believe.

Q. You heard that distinctly? You heard that, did you?

A. I heard that. I did not expect to count. I think it was three times.

Q. You remember that now definitely? You remember that? A. Yes.

Q. Now, what else do you remember definitely? You heard Caminos say, "Open up, police officers"? When did Caminos say that? Were you at the door when he said that?

A. No, I was slightly back of him.

(Testimony of Kam Yuen.)

Q. How many feet back?

A. Oh, about—I can't say exactly.

Q. Was Caminos standing when he said that or was Caminos running in, too? [439]

A. I don't remember whether he was standing.

Q. You were running when you heard that?

A. Yes.

Q. How old are you, Mr. Kam Yuen?

A. Twenty-two.

Q. How old is Caminos?           A. I don't know.

Q. He is an old man?           A. Yes.

Q. You have been in athletics before?

A. Yes.

Q. Track?           A. Yes.

Q. In fact, you just left track a couple of years?

A. Yes.

Q. Anyway, you heard this yell, "Open up, "Speed", police officers"?           A. Yes.

Q. You don't know where Caminos was when he said that?

A. I think he was in front of me.

Q. He was in front of you. You don't know whether he was moving towards the door or stationary?           A. I don't remember.

Q. You don't remember. In relation to you, was he standing directly in front of the door,—Caminos, I am referring to Caminos—? Where you were standing, did he appear to be standing directly in front of the door?           A. I don't quite remember.

(Testimony of Kam Yuen.)

Q. Do you remember where Wah Choon Lee was standing? [440]

A. At the time we got there?

Q. At the time you rushed up there, where was Wah Choon Lee standing?

A. I don't remember.

Q. You don't remember?

A. Next to Captain Caminos, on the side of Captain Caminos.

Q. Do you know what he was standing on, Captain Caminos, if anything, or could you see? Could you see what he was standing on when you went up there? A. Yes.

Q. What was Captain Caminos standing on?

A. There is a concrete walk; he was on the concrete walk.

Q. He was on the concrete walk?

A. There is also an iron mat there.

Q. Was Captain Caminos standing on that iron mat? A. I don't remember.

Q. And in your rush to the door you saw that Iron mat? A. Yes.

Q. You looked down and saw the iron mat while you were rushing to the door?

A. Not while I was rushing.

Q. When did you first learn of this iron mat, down at the Police Station?

A. When we got there.

Q. While you were rushing to the door?

(Testimony of Kam Yuen.)

A. Not while rushing.

Q. When? [441]

A. After we had reached the place.

Q. After you had reached the place sometime after the deceased fell back, isn't that correct?

A. Yes.

Q. So when you went up there you didn't see any mat? When you first went to the door you didn't see any mat? A. No, I did not.

Q. When you first saw Caminos standing at the door you didn't know there was a mat?

A. I don't remember.

Q. When you first saw Kam Yuen you didn't know there was a mat there? A. Wah Choon?

Q. Officer Wah Choon Lee, you didn't know there was a mat there? A. No.

Q. What did you mean by testifying on direct examination, Mr. Yuen, that you were positive that Wah Choon Lee was standing on the metal mat?

A. After he got his shock he doubled a couple of seconds. I saw him standing on the mat before he fell.

Q. When did he get the shock? What drew your attention to the fact he got this shock?

A. He let out a yell and he was sort of tottering for a couple of seconds; he was sort of unsteady on his feet.

Q. When, when he yelled? A. Yes.

Q. His feet crumpled?

A. Not that I can remember. [442]

(Testimony of Kam Yuen.)

Q. What happened? Describe that statement to the jury when you say, "he was sort of unsteady on his feet".

A. He let go of the door; he was sort of swaying.

Q. You get up and demonstrate.

A. (Standing and demonstrating) You see, when he let go of the door, he sort of swayed backwards a couple of seconds—when I looked down I saw the mat—and he fell backwards.

Q. Did you see him shaking like this (demonstrating)?

A. No.

Q. From the time that he yelled and fell back, he didn't shake?—

A. No.

Q. (Continuing) and fall back?

A. Not that I remember.

Q. How many feet away from him were you?

A. A few beyond.

Q. How many?

A. I don't remember exactly.

Q. There was a light burning a few feet, right above you?

A. Yes.

Q. Now, did he fall into your arms?

A. No.

Q. He went back?

A. Somehow Captain Kalauli caught him there. He fell in Captain Kalauli's arms and Captain Kalauli caught him.

Q. Now, Captain Kalauli—Now, what did Captain Kalauli do when he fell back? [443]

A. He was shaking him, I think.



(Testimony of Kam Yuen.)

Q. What is that, he shook him?

A. He shook him.

Q. He shook him around the neck, like this (demonstrating)?

A. I don't remember where. Anyway, Captain Kalauli was trying to do something for Wah Choon.

Q. Did anybody give him the old exercise, like when you get knocked out in a football game?

A. Captain Kalauli was trying to bring Wah Choon to.

Q. By shaking his head and slapping him?

A. I don't quite remember.

Q. You talked to Wah Choon Lee after he fell back?

A. No.

Q. You didn't even handle him at all? You let him go?

A. Just then the door opened and I was ordered in to assist Officer Burns.

Q. I see. What do you mean by "ordered in to assist Officer Burns"?

A. Captain Caminos detailed me.

Q. What did Captain Caminos tell you?

A. To go in and assist Officer Burns.

Q. That is all he told you?

A. All that I can remember.

Q. Did he tell you anything what you were supposed to do when you got inside the house when you folks were up the Police Station?

A. I don't remember.

(Testimony of Kam Yuen.)

Q. You don't remember. When he said "Go in and [444] assist Officer Burns" you want the jury to understand that?

A. I went in there to assist Officer Burns.

Q. When you went in to assist Officer Burns, Officer Burns was standing?

A. I found him in the room there.

Q. What side when the door opened? Where was Officer Burns? A. I don't remember where.

Q. Did you look in the front door?

A. I did.

Q. Where was "Speed" Warren?

A. Standing by the door.

Q. Who opened the door? A. I did not.

Q. "Speed" Warren was by the door. You didn't even see Burns? A. No, I didn't.

Q. There was no fight between Burns and "Speed" at the time you saw them? A. No.

Q. You went in to assist Burns when there was no fight? A. No.

Q. No. What did you have in your mind when you went into that door to assist Burns?

A. Well, I thought probably he was injured; he was unconscious.

Q. Probably he was injured; he was unconscious; you thought that when you didn't see him right in front of you, standing at the door?

A. No. [445]

Q. Anyway, you went into the room and you found Burns? A. Yes.

(Testimony of Kam Yuen.)

Q. You found he was entirely safe and sound in body and mind?

A. He was all right, yes.

Q. Then what did you do?

A. Then I was detailed by Captain Caminos to go upstairs.

Q. You were detailed by Captain Caminos to go upstairs to do what?

A. When I found Officer Burns safe and sound, Captain Caminos came in and he asked me to go upstairs and bring that woman down.

Q. When did Captain Caminos come in, if he ever came into that house that night?

A. I don't remember when.

Q. Did you see Captain Caminos ever go into that house that night?      A. Yes, sir.

Q. When?      A. I don't remember when.

Q. I am speaking now of the time that the door opened. You remember that, don't you?

A. Yes.

Q. When at that time did you see Captain Caminos go into the house?

A. After I found Burns, I asked Burns whether he needed help; he said "No".

Q. I see.

A. Then Captain Caminos came in. [446]

Q. Then Captain Caminos came into where?

A. Into the house.

Q. In the room that you and Burns were in?

A. In the reception room.

(Testimony of Kam Yuen.)

Q. In the reception room. What do you mean by the "reception room"?

A. Well, there is—I don't know whether you would call it a reception room; there is a large room.

Q. The large room is what you are talking about. That is where you had a conversation with Captain Caminos and that is downstairs. You had a conversation with him; that is where you got your instruction from Captain Caminos? A. Yes.

Q. He told you to go and look for some girls?

A. He told me to go upstairs and bring the woman down.

Q. Where was "Speed" all this time?

A. She was moving about. I didn't see her.

Q. She was downstairs?

A. She was upstairs.

Q. You were sent up by Captain Caminis to stand by "Speed" while she was upstairs and watch her; you deny that? A. No.

Q. You deny that you were sent up by Captain Caminis to watch "Speed" when "Speed" went upstairs to get dressed?

A. Not that I remember of.

Q. You don't remember but you went upstairs?

A. I did. [447]

Q. Right after "Speed" went upstairs, isn't that correct? A. Yes.

Q. You found yourself upstairs? A. Yes.

Q. And "Speed" was in that room?

A. Yes.

(Testimony of Kam Yuen.)

Q. You saw "Speed" there? A. Yes.

Q. Did you see any other woman in that room?

A. No.

Q. Did you hear any conversation by "Speed" or any statement while you were there?

A. Not that I remember of.

Q. Not that you remember. You were up there until "Speed" came downstairs and "Speed" was taken away, isn't that correct? A. Yes.

Q. You were in constant company of "Speed" until she was taken away, isn't that right? You were right there watching her every move?

A. No.

Q. What were you doing up there, sitting down?

A. Standing.

Q. Standing. Now, when the door opened, did you see anybody make any statement?

A. No.

Q. Did you hear Captain Caminos make any statement? A. No, I don't remember.

Q. You don't remember. Did you hear anything about [448] arrests?

A. I don't remember.

Q. You don't remember?

A. I don't remember.

Mr. Dwight: No further questions.

### Redirect Examination

By Mr. Young:

Q. Kam Yuen, you say that Officer Caminos detailed you to go upstairs to get a woman?

(Testimony of Kam Yuen.)

A. Yes.

Q. That was "Speed". Who was it, do you know?

A. I don't.

Q. Beg pardon? Do you know?

A. I don't know the woman.

Q. "Speed" was upstairs when you got there?

A. I don't remember. She might have gone up before I did.

Q. She was up there when you got there?

A. I don't quite remember.

Q. Did you see "Speed" change her clothes up there?

A. No, I didn't follow her all around.

Q. You didn't follow her all around up there?

A. No.

Q. Did she have different clothes when she came out than when you first saw her?

A. Yes.

Q. You didn't see her put those clothes on?

A. No.

Q. You know what part of the house she went to to put [449] them on?

A. Yes.

Q. Where?

A. In the room.

Q. She went into another room?

A. Yes.

Q. When she came out she had some different clothes on, is that correct?

A. Yes.

Q. You weren't with her during the time that she was changing her clothes?

A. No, I wasn't.

Q. Now, how long have you been a police officer before this raid on August 3rd?

(Testimony of Kam Yuen.)

A. About two weeks.

Q. About two weeks. This was your first raid?

A. Yes, sir.

Q. You have testified to everything that you remember?           A. Yes.

Mr. Young: No further questions.

The Court: That is all. You are excused.

Recross Examination

By Mr. Dwight:

Q. Just a moment. Kam Yuen, when you went upstairs you said Mrs. Warren went into a room?

A. Yes.

Q. And she, you say, closed the door?

A. I don't remember.

Mr. Young: He did not say she closed the door.

[450]

By Mr. Dwight:

Q. You don't remember in what direction. How big is this room upstairs that you were standing in after you go upstairs?

A. Oh, about three-fourths the size of this, where the rail is (indicating rail in court-room). About from that wall (indicating) to somewhere around here, approximately (indicating).

Q. About 12 feet by about 20 feet; would that be a fair estimate?           A. About.

Q. Twelve by twenty?           A. About that.

Q. And you were standing in the middle of the room when you came upstairs?

(Testimony of Kam Yuen.)

A. I don't remember whether it is the middle or side.

Q. Which direction; does the room run this way (indicating on Ex. "A")? Here's Muliwai Street (indicating on Ex. "A").

A. Yes.

Q. Does that room run this way, something like that (indicating on Ex. "A")?

A. I don't remember.

Q. You don't remember in what direction the room runs?

A. No.

Q. Mrs. Warren went into a room and that room is situated at the other end of this big room?

A. Yes.

Q. She never went over on this side of the house at all upstairs (indicating on Ex. "A")? [451]

A. I don't remember.

Q. You don't remember. And how long was she in that room?

A. I don't remember.

Q. And so that about how far away were you from the door to the room?

A. The door of the room?

Q. Yes, the door of the room that Mrs. Warren went in?

A. I don't remember how many feet.

Q. Can you give us any idea, from you to me?

A. About that.

Q. You were standing about that distance from the room?

A. Yes.

Q. From your observation upstairs, where you were standing, there are rooms on this side (indicating)?

A. Yes.



(Testimony of Kam Yuen.)

Q. There is a kitchen on this side you could see?

(Indicating) A. Yes.

Q. Did you see Mrs. Warren go near that?

A. Yes.

Q. When did she go near that?

A. She called one Army Sergeant; she went in the kitchen and whispered.

Q. You heard the talk to the Army Sergeant?

A. Yes.

Q. That was the only conversation that took place?

A. As far as I can remember.

Q. That Army Sergeant was the witness that testified [452] here the other day?

A. I don't know; I wasn't here the other day.

Q. He was the only man that was upstairs when you went up?

A. I think there was another fellow.

Q. There was radio? A. Yes.

Q. Where is that radio located?

A. I don't remember.

Q. There is a steps; in relation to the steps that you come up, where was the radio, on the other end of the room? A. I don't remember.

Q. You don't remember? A. No.

Mr. Dwight: No further questions.

Mr. Young: That is all.

The Court: Witness excused. The Court will rule on that motion to introduce Exhibit "H". The

Court sustains the objection and denies the introduction of Exhibit "H".

Mr. Young: May we have our recess now, at this time?

The Court: The Court stands in recess for ten minutes.

(A brief recess was taken.) [453]

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DAVID LIU,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Doctor David Liu.

Q. What kind of a doctor are you, what profession?

A. Medical doctor.

Q. Where did you receive your education, Doctor Liu?

A. You mean medical?

Q. Yes.

A. Loma Linda, Southern California. Loma Linda College of Medical Evangelists is the name of it.

Q. When did you receive your degree?

A. 1929.

Q. Where have you been since 1929?

A. In Portland and Honolulu.

Q. Practicing medicine? A. Yes, sir.

(Testimony of David Liu.)

Q. Duly licensed physician and surgeon in the Territory of Hawaii?      A. Yes, sir.

Q. What is your work?

A. At the present time I am Second Assistant and also Acting Coroner's Physician.

Q. Of what?

A. City and County Health Department.

Q. How long have you held that position?

A. For the last six, seven, eight years.

Mr. Young: Any questions on the doctor's [454] qualifications?

Mr. Dwight: I don't want to admit the doctor's qualifications. I would like to reserve the right to take that up on my general cross-examination. If at that time the doctor is qualified, I won't make my motion to strike.

By Mr. Young:

Q. Doctor, were you in the service of the City and County as a physician and surgeon on August 4, 1937?      A. Yes, sir.

Mr. Dwight: At this time I object to counsel refreshing the doctor's memory. He has a right to testify from his independent recollection. I object to counsel showing him any papers.

Mr. Young: This is preliminary. I will withdraw the question.

The Court: Proceed, then.

By Mr. Young:

Q. Doctor, do you recall on the 4th day of August whether you performed any autopsies—I

(Testimony of David Liu.)

mean on the 4th day of August, 1937, whether you performed any autopsies? while in the employ of the City and County of Honolulu?

A. Yes, sir.

Q. How many autopsies did you perform?

A. I don't remember but I did one at least.

Q. You did one at least. Who was that person, do you know?

A. It was given me as Wah Choon Lee.

Q. And what is an autopsy, doctor?

A. It is an examination of a body after death.

[455]

Q. For what purpose?

A. To determine the cause of death.

Q. Examination of a body to determine the cause of death; is that the medical definition of an autopsy? A. Practically, yes.

Q. Now, where was the body of Wah Choon Lee when you performed this autopsy?

A. In the City and County morgue.

Q. Would you know a picture of that body if you saw it again? A. Oh, yes.

Q. Now, what did you do with the body? What were your findings, doctor?

Mr. Dwight: Just a moment. May I ask the Court to caution this witness if he is going to give that conclusion at this time, that he confine his answers entirely to his autopsy and not to what anybody gave him, not from any information that he received from any outside source.

(Testimony of David Liu.)

By the Court:

Q. You understand Mr. Dwight's suggestion?

A. Yes, sir.

Q. That you confine your testimony strictly to the autopsy and not what anyone told you, any outside information?

A. Yes, sir.

By Mr. Young:

Q. What were your objective findings at the autopsy? What did you find?

A. Well, I did not see his clothing but at the time [456] he had no clothing. Both hands were covered with mud, red mud. There was a evulsion of the skin on his right thumb, externally. That is all there was.

Q. That is the only mark externally on the body?

A. Yes, sir.

Q. And did this evulsion appear to you to be a fresh one or old one?

A. Fresh.

Q. Fresh one?

A. Fresh origin.

Q. What do you mean by an evulsion?

A. Loss of the skin, loss of the normal tissue.

Q. Now, did you open up the body?

A. I opened the head and the body.

Q. What were your findings?

A. In opening the head I found that the brain was very congested and I opened the chest and abdomen and found that the heart was contracted and revealed numerous peritechial hemorrhages, small hemorrhages on the heart. The organs of

(Testimony of David Liu.)

the abdomen was markedly congested. That is all I found.

Q. Now, what was the condition of the body from the standpoint of your observation? Was it a well-developed or not well-developed body?

A. Well-developed.

Q. Well-Developed male?

A. Male; yes, sir.

Q. Did you examine any other parts of the body?

A. I examined but I didn't find anything.

Q. The only things that you found that attracted your [457] attention was the congestion in the brain, the small hemorrhages in the heart and the fact that the heart was contracted?

A. Yes, sir.

Mr. Dwight: May I again ask the Court to caution the witness that he confine his answers solely to what he found there?

The Court: I did. What is the question again?

By Mr. Young:

Q. Just from seeing that body, what you saw of the brain and heart, would that condition there indicate anything to your mind as to what happened to the body, if you did not know any of the history?

A. I wouldn't know.

Q. You wouldn't know?                      A. No, sir.

Q. Would you, just from your examination there, from what you saw if you had no history at

(Testimony of David Liu.)

all of what happened to the body, would you have an opinion as to what the cause of death was?

A. It is rather difficult.

Q. Now, doctor, assume, doctor, that this body, that you examined this body when it was living and when it was the person of Wah Choon Lee on the day before August 3, 1937, at about 9 o'clock p. m., and it was standing either upon a metal plate or upon a cement walk, which was wet, and assuming further that this person, Wah Choon Lee, while so standing in such a position reached up with his arms and grabbed with his bare hands a copper plate which was attached, made contact with a screen, which was attach- [458] ed to a wire carrying a voltage of 600 volts, assume that, doctor; assume that after the man had touched this copper plate he shook for a matter of a couple of seconds and fell back into the arms of a person that caught him; assume that he was taken from that point to a hospital and that he was pronounced dead at 20 minutes later, or at 9:20 p. m.; assume that on the way to the hospital a person that was with him felt his body grow cold,—first warm and then grow cold on the way to the hospital; now, doctor, together with your findings on that body and these facts, would you have an opinion as to what the cause of death was?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as being a misstatement of the evidence, not assuming all of the facts upon which a doctor can base his opinion, therefore the hypo-

(Testimony of David Liu.)

thetical question is improper, incompetent and immaterial.

The Court: Objection overruled.

Mr. Dwight: Note an exception.

The Court: Exception may be noted.

By Mr. Young:

Q. Would you have an opinion as to what the cause of death was? A. Yes, sir.

Q. What is your opinion based on, your medical experience and knowledge of an electric shock?

A. He died of electric shock.

Q. Would that opinion be consistent with your findings in the body as to the condition of the heart and brains? [459]

A. It is possible, yes, sir.

Q. Assuming those same facts, doctor, that I gave to you in the previous question and taking into consideration the finding on the thumb of the evulsion that you have testified to, would you have an opinion as to whether or not that mark on the thumb, that evulsion, was caused by the contact with that copper plate charged with 600 volts of electricity?

Mr. Dwight: May I have my same objection and exception to the prior ruling?

The Court: You may have it to this and the prior question. Overruled.

By Mr. Young:

Q. Do you have such an opinion?



(Testimony of David Liu.)

A. It is very hard to tell what that is.

Q. You couldn't state whether that could have been caused by that or not?      A. No.

Q. It could have?      A. It is possible.

Q. It is possible?      A. Yes.

Q. What time did you perform your autopsy?

A. About nine o'clock.

Q. About nine o'clock in the morning?

A. In the morning.

Q. August 4, 1937?      A. Yes.

Q. Now, I will show you Prosecution's Exhibits "B" and "C" in evidence. Examine those two pictures and [460] tell the jury whether or not this is the body that you testified about.

(Mr. Young handed the pictures, Prosecution's Exhibit "B" and Prosecution's Exhibit "C", to the witness.)

A. (After examining the same) Yes, sir.

Q. That is the body?      A. Yes, sir.

Q. Referring to Prosecution's Exhibit "C" in evidence, will you look at the hand portrayed there?      A. Yes, sir.

Q. Will you tell the jury whether or not that represents the thumb that you testified to when you performed the autopsy?      A. Yes, sir.

Mr. Young: No further questions.

(Testimony of David Liu.)

Cross Examination

By Mr. Dwight:

Q. These other dark things shown on the other fingers is mud that you testified to?

A. I think so.

Q. The only other mark that you saw on the body was this evulsion?      A. Yes.

Q. That is what it appeared to be. If you rub it against a rough surface, a piece of skin falls off; that is all you had there?      A. Yes, sir.

Q. Now, doctor, in practically every case where death is caused by electricity, isn't it a fact that there is [461] present on the body somewhere burns, so-called burns, as they call it?

A. Not in every body.

Q. Not in every body?      A. No, sir.

Q. Are you sure about that?      A. Yes, sir.

Q. You ever read "Herzog on Medical Jurisprudence"?      A. I know Webster.

Q. You are not familiar with "Herzog on Medical Jurisprudence"?      A. No.

Q. You ever hear of Doctor Herzog?

A. I am not certain.

Q. I think his book is published May 1, 1931. Have you consulted any authorities on the subject by authors subsequent to that date?

A. Yes, sir.

Q. Webster, subsequent to that date?

A. Yes, sir.

Q. When was Webster published?

(Testimony of David Liu.)

A. I think it is around 1935.

Q. 1935. Now, you didn't find any burns on the body?

A. Burns?

Q. Yes, burns commonly connected with electrocution?

A. No, I didn't.

Q. Now, doctor, you say you have practiced here and up in Portland, Oregon. You had just a general experience of medicine?

A. Yes, sir. [462]

Q. Surgery and physician?

A. Yes, sir.

Q. Do you know anything about the disease called shanker?

A. Yes, sir.

Q. What is that?

A. That is a disease of syphilis.

Q. Is it a syphilitic condition?

A. Yes, sir.

Q. It is virulent?

Mr. Young: If your Honor please, I object to this evidence about syphilis as being incompetent, irrelevant and immaterial, not proper cross examination of this doctor. This doctor has only testified to the electrocution and about the body in question. If counsel wants to prove there are any shankers, he will have to prove it in another way.

Mr. Dwight: I have a perfect right to examine this doctor on his qualifications. There are some subjects, and I am testing his ability as a doctor and that is for that purpose.

The Court: Objection overruled.

By Mr. Dwight:

Q. Can you answer the question?

(Testimony of David Liu.)

A. What was that question again, please?

Q. When a person has a shanker, syphilis, it is most contagious at that time?

A. It is most contagious at that time.

Q. It is most contagious at that time. Now, doctor, [463] assuming a person has shanker and has—say, she is nervous, calls the police, invites people to her house, jumps out of a taxicab because she doesn't like what the driver said——

Mr. Young: I object to this——

Mr. Dwight: Just a moment, let me finish my statement. (Continuing) Jumps out of a taxi in front of the Y. M. C. A. because she didn't like the remark the taxi driver had said, called the police and said that somebody was shooting her when she had a pin sticking in the back of her shoulder; taking those facts into consideration would you say that person was insane from syphilis?

Mr. Young: Objected to as incompetent, irrelevant and immaterial, not proper cross examination. It is apparent on the face of it counsel is trying to prove his case by this witness.

Mr. Dwight: I have the answer in the text.

Mr. Young: I still object to it as being incompetent, irrelevant and immaterial, not proper cross examination. Let counsel recall this doctor if he wants to make him his own witness.

Mr. Dwight: I have a right to test his qualifications. I have a right to ask of his experience. I have a right to ask about cases that have come to his knowledge. I am defending this defendant here.

(Testimony of David Liu.)

The Court: The Court will sustain the objection as not proper cross examination.

Mr. Dwight: Save an exception. [464]

The Court: Exception noted.

By Mr. Dwight:

Q. Doctor, does syphilis affect the brain?

A. At a certain stage, yes, sir.

Q. And when you say "Yes, sir", you mean that syphilis is a disease that causes insanity, isn't that correct?

A. Not all syphilis results in insanity.

Q. Not all syphilis results in insanity?

A. If properly treated.

Q. Oh, yes, if properly treated. Assuming that syphilis is not properly treated and you got syphilis and shanker, would that affect the brain?

A. Not all cases.

Q. The majority of cases?

A. I don't know what percentage.

Q. You do know, doctor, that it does affect the brain?

A. Yes, sir.

Q. Paresis follows? A. Yes.

Q. How soon does it follow?

A. Invariably.

Q. It may start with the inception, it may start sometime afterwards?

A. Usually quite some time afterwards.

Q. And paresis—a person with paresis is insane?

A. Yes, sir.

(Testimony of David Liu.)

Q. And paresis is what you would call the softening of the brain?      A. Yes, sir.

Q. And paresis is caused always from syphilis?      [465]

A. Oh, yes.

Q. Now, doctor, is there any definite way of determining whether a person died from electrocution as distinguished from a person dying from shock?      A. No.

Q. No way of determining?      A. No.

Q. If I kicked you in the stomach hard enough, doctor, and artificial respiration was not given to you or proper treatment given to you and you died—you better have me die and you cut me open and looked at my heart, would you find the same condition that you found in that body?

A. I don't think you would find the hemorrhages.

Q. Are you sure about that?

A. Yes, sir.

Q. If I received a severe shock from fright that scared the life out of me and I collapsed and died, would you find that condition in the heart?

A. I never seen it.

Q. You never had an opportunity. I am speaking now, theoretically.

A. You will find the same condition. It is pretty hard to believe it.

Q. How about the congestion in the brain?

A. There is no congestion in the brain from death in that way.

(Testimony of David Liu.)

Q. Now, doctor, have you ever heard of this statement in—By the way, doctor, did you take a microscopic examination of the tissues of the heart at all? A. No, sir. [466]

A. *No, sir.*

Q. You ever hear of that being the positive way of determining whether a person died from electricity, the effect on the tissues? A. Yes.

Q. That test wasn't made? A. No.

Q. And usually, doctor, where a person grabs an electric wire, he can't let go until he is dead, isn't that correct?

A. It would all depend on the voltage.

Q. Well, 600 volts, I think that was put in here?

A. I am not familiar about that.

Q. You are not familiar? A. No, sir.

Q. Isn't it the fact, where there is a high voltage, doctor, that the man must die before the hold is released?

A. I don't know anything about it. The majority of cases had already happened and are brought to me.

Q. Have you ever read on page 272 of Doctor Herzog's book on "Medical Jurisprudence"?

Mr. Young: I object to counsel reading the statements to the witness about a book he has never read.

The Court: Objection sustained.

Mr. Dwight: Very well, I will withdraw my present question, if I have one pending.

The Court: All right, withdrawn.

(Testimony of David Liu.)

By Mr. Dwight:

Q. Doctor, have you ever seen anybody that had been [467] electrocuted in an electric chair?

A. No, sir.

Q. A body? A. No, sir.

Q. Were you a doctor at the City and County when this fellow grabbed a wire down here (indicating towards the sea)? A. Yes, sir.

Q. He was burned, was he?

A. I think so.

Q. He was toasted? A. Yes.

Q. And he was burned where his body came in contact with the wire? A. I think so.

The Court: Did you see the body?

A. I saw the person. I don't know what person you are referring to.

By Mr. Dwight:

Q. I am referring to the man the police were after.

A. I seen that man. I did one last week. Another person touched the wire.

Q. Burned?

A. His voltage was terrifically high, 11,000 volts.

Q. I mean, was he burned?

A. Yes, sir.

Q. In every case where you have experience down here, people coming in contact with electric current, you have found non-medical evidence of burns, excepting this present case? [468]



(Testimony of David Liu.)

A. You mean from any burns?

Q. From burns.

A. I saw one at Kaneohe Bay. He didn't have a single burn.

Q. That was the fellow standing in the ocean?

A. I presume 110 volts.

Mr. Dwight: I think that is all.

Redirect Examination

By Mr. Young:

Q. Doctor, do I understand your testimony to be some cases of electrocution some burns are present and some are not? A. Yes.

Q. All depending upon the voltage?

A. Yes, sir.

Q. Do the type of burns, when they are present, do they vary? A. Yes, sir.

Q. Some may look different than others?

A. Yes, sir.

Q. I believe on your direct examination you testified that this mark on the thumb might have been a burn?

A. I don't know; it might have been.

Q. It might have been a burn; it might have been a scrape? A. Yes.

Q. You don't know? A. No.

Mr. Young: No further questions.

Mr. Dwight: No further questions.

The Court: Witness excused. [469]

Mr. Dwight: While we are having a little intermission, I will ask to recall Captain Caminos for further cross-examination, if counsel will not admit that.

Mr. Young: I object to counsel asking me to stipulate anything in the presence of the jury.

The Court: Take that up in recess. Swear the witness.

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LEVI KALAU LI,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Captain Levi Kalauli.

Q. Captain of what?

A. Captain of the Rural District, Captain of Police.

Q. Captain of Police, City and County of Honolulu?

A. Yes, sir.

Q. How long have you been a police officer?

A. Twenty years.

Q. And where? How long have you been stationed at your present post?

A. About six years.

Q. Six years; that is, at Wahiawa?

A. Yes, sir.

Q. Do you know a person by the name of Ilene Warren alias "Speed" Warren?

(Testimony of Levi Kalauli.)

A. I do. [470]

Q. Is she in the court-room here this morning?

A. Yes, sir.

Q. Where is she, please?

A. She is right there.

(The witness indicates the defendant.)

Mr. Young: May the record show the identification?

The Court: Let the record so show.

By Mr. Young:

Q. How well do you know "Speed" Warren?

A. Very well.

Q. Very well. Do you speak to her when you see her?

A. She generally comes to my office and talks to me.

Q. How long has that acquaintanceship lasted, approximately, just roughly?

A. I think ever since 1933.

Q. 1933. About five years?                      A. Yes, sir.

Q. Do you know where she lives?

A. Yes, sir.

Q. Do you know where she lived on August 3rd of 1937?                      A. Yes, sir.

Q. Where did she live on that date?

A. She lived at her home on Muliwai Street.

Q. What town?                      A. Wahiawa.

Q. Will you look at the exhibits on the board, those pictures, "D", "E", "F" and "G", and tell

(Testimony of Levi Kalauli.)

the jury whether or not that was her home on August 3, 1937?

A. (The witness examined the same.) Yes, sir, this [471] is her home.

Q. That is her home? (Indicating)

The Court: What exhibit is *the* pointing to?

Mr. Young: He is pointing to "F".

Q. How about this picture here (indicating)? Will you look at that one? A. Yes, sir.

Q. What is that? A. Part of her home.

Q. What part of her home?

A. The side, it was taken.

Q. There is an opening in the bottom. Do you know what that opening is?

A. This opening here (indicating)?

Q. By that rail there is a door there. Do you know what that is? A. No, I don't.

Q. Do you know whether or not that is the front or the back door? A. No, I can't say.

Q. You couldn't say. Will you take the stand please? Now, did anything happen on August 3, 1937, that was unusual, that you recall?

A. Yes, sir.

Q. What happened unusual on that day?

A. On that day Police Officer Wah Choon Lee met with his death.

Q. Do you know what happened to him?

A. I saw what happened.

Q. Will you please tell the jury what you saw?

(Testimony of Levi Kalauli.)

A. On that night a raid was conducted at the home of Mrs. Ilene Warren at Wahiawa, Oahu. Accompanying me to the scene was Captain Caminos, Officer Burns, Officer Apoliona, Officer William Chun, Officer Kam Yuen and Officer, deceased Officer Wah Choon Lee. Upon arrival at the scene we were out on the road.

Q. Who do you mean by "we"?

A. I will get to that.

Q. Thank you. Just go ahead.

A. Officer Caminos—Captain Caminos, Officer Kam Yuen and Officer Wah Choon Lee and myself were out on the road near the front entrance of Mrs. Warren's home. Officer Burns, who knocked at the door of the house and the door was opened and walked in, was the only officer that was near the house and the only officer that made entrance of the home at that time. A few minutes later on the police whistle blew from the inside. We ran to the entrance and over to the door of the house. There was a little noise in the house, inside of the door upon our arrival. Officer Caminos in a loud voice called, "'Speed' Warren, open the door; we are police officers." This was repeated for three times. Officer Captain Caminos kicked the door, followed by Officer Lee. Immediately after that Officer Lee reached up for the door of the house, that is, the metal piece of iron, and I was about the middle of the two of them; Captain Caminos

(Testimony of Levi Kalauli.)

on my right and Officer Lee on my left; reaching for the top of the door, meaning Officer Lee. I immediately thought it would be the best way to get the door out. By a split second, the officer started to yell and I sidestepped direct- [473] ly in the rear of the officer. The officer was leaning backward with his hand up against the metal piece of the door. Finally his hands were released. He fell right into my arms. I dragged him from the door a little ways off and lay him down on the ground. I worked on him, turned him sideways and turned him upside down, thinking I would bring the officer to, but when I called his name there was no answer from him. I realized at that time that the case was serious. I was there alone and the rest of the officers there were under the direction of Captain Caminos. It happens that Captain Caminos come out from the building and I asked him to look for the officer on the ground and I to go back to the Station for my car to have the officer taken direct to the hospital. I did; I ran back to the Station and found one of my officers there. I instructed him to go down to "Speed" Warren's place, get the officer and rush him to the hospital. I did not make any entrance of the home that night when this incident happened, nor did I examine anything in the house. I immediately then made the report to the Police Station in Honolulu of this incident. Immediately after that I received a call from the Post Hospital,

(Testimony of Levi Kalauli.)

Schofield Barracks, that the officer is gone. I relayed the same message to Honolulu again of the incident. The investigation, as a whole, was conducted by Captain Caminos and the officers on the scene until the arrival of Captain Hays, Chief Gabrielson and other officers.

Q. Captain, did you at any time touch this door?

A. I did not. [474]

Q. What was the condition of the weather when you arrived there?

A. It was wet, drizzling at the time.

Q. Was it drizzling when you were at the door?

A. Yes, sir.

Q. Was there a light on the door?

A. There was a light right in the middle of the door as you go into the building.

Q. You mean above the door?

A. Above the door, right in the middle.

Q. Did you get a good look at that door while you were there that evening?

A. I did for a very short time.

Q. Can you describe how that door looked to you at that time?

A. I haven't measured; I haven't made any measurement of the door, nor the width of the door, but, however, it was a piece of—it was a metal piece of iron that extends from the bottom up to about three-quarters ways up.

Q. And what part of that did Wah Choon Lee grab?

A. The top part.

(Testimony of Levi Kalauli.)

Q. The top part. How did he grab it? Will you illustrate just the way he grabbed that iron? Stand up, please. Just pretend that that door is in front of you.

A. In this manner.

(The witness stands up and takes hold of the rail of the witness stand with both hands in demonstrating.)

Q. Then he gave a yell and fell into your arms?  
[475]

A. He gave the yell and I sidestepped directly in the back of him.

Mr. Young: No further questions.

#### Cross Examination

By Mr. Dwight:

Q. Captain, you say that this investigation, as you term it, was conducted by Captain Caminos?

A. Yes.

Q. Was there any discussion before you folks went down there, at the Wahiawa Police Station?

A. There was.

Q. Did Caminos make any statement to the brother officers there?

A. The statements that Captain Caminos made to the officers, especially the new ones,—Kam Yuen, Francis Apoliona and William Chun were new officers. They were instructed not to touch anything or not to go until they got the direct orders.

Q. What were you folks all going down there for, Captain?



(Testimony of Levi Kalauli.)

A. We were going down there to raid "Speed" Warren's place.

Q. Did you have a search warrant?

A. No.

Q. Did you have a warrant of arrest?

A. No, I have not.

Q. Did you bring that subject up at the conference?      A. No, I did not.

Q. Nothing was said about the search warrant?

A. No, I did not. [476]

Q. Was that discussed at the meeting at the Police Station?      A. No.

Q. Was anything said about going down there, rushing in and raiding the place? Was that the idea?      A. No.

Q. What was the idea as you got it?

A. It was arranged this way: When a police whistle blew from inside the house, then we rush to the door.

Q. To break into the house?

A. No, not to break in the house.

Q. And demand admittance?

A. I don't think there was any discussion of demanding admission.

Q. When you hear the whistle, run for the door?

A. Run for the door.

Q. Who was to blow the whistle?

A. The officer that made entrance of the building; that is Burns.

(Testimony of Levi Kalauli.)

Q. Did you see the three marks dollars that he had?      A. I did not.

Q. Did you see the three marked dollars passed between Burns and Caminos?      A. I did not.

Q. Was anything said about marked money?

A. I did not hear it.

Q. Was anything said about Burns not taking off his clothes?      A. I did not.

Q. Was anything said to Burns about not having [477] intercourse with any of the women?

A. I did not.

Q. All you heard was Burns was to go in; when he got inside he was to blow the whistle and you were to come to the door?

A. Yes, that is all.

Q. That is all the instructions?

A. Maybe there were instructions given to the man that I did not hear.

Q. All I am talking about is the instructions given at the Wahiawa Police Station.

A. No.

Q. Where were you, hiding in the bushes?

A. No, I was on the road.

Q. The rest of them were all in the bushes?

A. No, not in the bushes. We were on the road; some on the side, some in the rear, some in the front. I know Captain Caminos was in front of me.

Q. This Yuen was right there, too?

A. No, Yuen was in the rear and myself.

(Testimony of Levi Kalauli.)

Q. You seen those "No trespassing" signs that Mrs. Warren has outside of her place?

A. Not that night.

Q. You have seen it before that?

A. I can't recall.

Q. Right there where you folks were hiding; you were hiding by the sisal bush, right there where the driveway is?

A. We were not hiding behind the sisal tree; we were on the road at the time. [478]

Q. Anyway, you were right by the sisal bush?

A. We were near to the sisal bush, which is very near to the road.

Q. There is a hedge there and on this side there is an entrance and a hedge?

A. Entrance and hedge.

Q. A little bit along the hedge, did you see a great big sign about three feet in, "No trespassing"?

A. As I said, there might be a sign there. I can't recall.

Q. You didn't see it?           A. No.

Q. Where was Caminos, was *the* crouching down or was he standing up?

A. We were all standing up.

Q. I am speaking of the time when you were by this sisal bush, when you were outside in the road.

A. Well, I can't remember; he was in the front of me, standing in the front of me.

(Testimony of Levi Kalauli.)

Q. By the way, did you see Burns go inside the house? A. I did.

Q. How long after he got in did he blow the whistle, quick?

A. Sometime; I could not tell you exactly.

Q. Pretty quick?

A. I would not say very quick; opened the door, went in, sometime after that. I couldn't tell you the exact minutes that he was in there at the time.

Mr. Dwight: Your witness.

Mr. Young: No further questions.

The Court: Thank you, Captain. [479]

The Court: It is time for 11 o'clock recess. The Court will stand in recess for five or ten minutes.

(A brief recess was taken.)

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JAMES S. BUNNELL,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name?

A. James S. Bunnell.

Q. Where do you live, Mr. Bunnell?

A. 1564 Magazine Street, Honolulu.

Q. Honolulu? A. Yes, sir.

Q. What is your profession?

(Testimony of James S. Bunnell.)

A. Electric Meter Engineer.

Q. And how long have you been practicing that profession?      A. For about 13 years.

Q. What is your present connection?

A. I am the Meter Superintendent of the Hawaiian Electric Company.

Q. As Meter Superintendent of the Hawaiian Electric Company, what work is in your hands?

A. The installation of all meters, the completion of all service orders and also investigation of special permits, permits that come up once in a while.

Q. Where did you receive your education in engineering? [480]

A. Polytechnic College of Engineering, Oakland.

Q. What degrees did you receive?

A. Bachelor of Science.

Q. When did you receive that?

A. 1923; in 1923; graduated in 1923.

Q. Have you studied further after receiving your degree?      A. I study constantly.

Q. How long have you been in the Territory of Hawaii?

A. I came to the Territory November 1, 1935.

Q. And how long have you been holding your present position with the Hawaiian Electric Company?

A. Since that time I came to the position.

(Testimony of James S. Bunnell.)

Mr. Young: Any questions on the qualifications as to being an electrical engineer.

Mr. Dwight: Well, your Honor, may I reserve my right to move and to examine him upon his qualifications upon my cross examination.

The Court: You may. Proceed with the examination.

By Mr. Young:

Q. Mr. Bunnell, as Superintendent of the Meter Division, is what you said?

A. Of the Hawaiian Electric Company, Meter Department.

Q. Are you acquainted with the substation at Wahiawa?

Mr. Dwight: Just a moment. Is this witness being called as an expert or is he being called as an opinion expert?

By Mr. Young:

Q. Just this one question: Are you acquainted with [481] that substation?

A. Yes, sir; I know the location of the substation. I go in there quite frequently.

Q. You know the current that goes out over it?

A. Yes.

Q. Now, Mr. Bunnell, assume that an electric three-way wire, carrying a current with a voltage of 115 volts, has its source from the circuit arm of 4,000 volts on an Hawaiian Electric line fed from Wahiawa Substation; assume further that this elec-

(Testimony of James S. Bunnell.)

tric wire with a potential of 115 volts enters a house out there near the Wahiawa substation and that this line, after passing through the switch near the fuse plugs, is attached to and passes through a knife-type switch; that the two wires from the knife-type switch lead to a transformer in the house, which steps up the voltage to 600 volts; assume further that one of the wires leading from the transformer is attached to a screen on a screen door, which screen makes contact with a copper plate on the outside of that door; that another wire leads from the transformer in the house to a pipe ground; assume further that there is an iron or metal door mat resting on a cement walk just in front of the door; and assume that it is raining or drizzling; that the cement is wet; that the iron door mat on the cement is wet; assume further that a human being stands upon the iron door mat, which is resting upon the wet cement, and that this human being, a male, grasps the copper strip on the door firmly with his bare hands; would you have an opinion, based upon your knowledge and experience as an electrical engineer, as to whether or not it would be dangerous to the life [482] of the person so situated for another to close the switch that I have mentioned?

Mr. Dwight: Objected to as incompetent, irrelevant, may it please the Court, upon the first ground that the facts as stated are not shown by any evidence testified in this case and are based upon facts

(Testimony of James S. Bunnell.)

not of record in this particular case; second, that it calls for the conclusion of this witness, not as an electrical expert, but as a medical expert in determining the question of a dangerous instrumentality to man and man's health.

The Court: Have you anything to say?

Mr. Young: Certainly an electrical engineer is competent to testify so far as something is dangerous. Anyone working with electricity can testify as to whether a certain amount is dangerous.

The Court: Will you please lay by questions a foundation as to his experience as to the fact of danger?

By Mr. Young:

Q. Just setting aside this assumed case, Mr. Bunnell, for the time being, have you, in your work as an electrical engineer, ever seen anyone injured by coming in contact with live wires, electric wires?

A. I have never seen them fatally injured. I have seen them come in contact with wires up to six or seven hundred volts.

Q. Have you seen the effect on those people?

[483]

A. I have felt the effect myself.

Q. From your knowledge and experience, do you know what the effect of a certain voltage would be on a person, whether it would be dangerous or not?

Mr. Dwight: Objected to on the same ground. The mere fact he has taken 700 volts and knows how it feels doesn't qualify him as an expert on



(Testimony of James S. Bunnell.)

what effect it would have upon a human being. He isn't qualified as a medical expert.

Mr. Young: He is an electrical engineer, a man handling electricity every day, consequently can know when a certain thing is dangerous, otherwise how can he perform his work.

The Court: Will you read the latter part of that question, where the opinion comes in, just the last line of that question?

(The last question was read.)

Mr. Dwight: May it please the Court, this isn't a qualifying answer. The question was, "Have you seen the effect on any person in receiving an electric shock?", and he says, "No, I have taken 700 volts myself". Now, that doesn't constitute him as an expert.

Mr. Young: If your Honor please, I am sorry. This witness is not testifying as to what effect electricity has after it enters the body. I will have Doctor Faus testify to that. He can certainly testify as to whether the touching of the wires is dangerous, from an electrical engineer's standpoint, from his knowledge and practice, based upon his experience. As to the effect, that [484] is the doctor's testimony. He, as an electrical engineer, can state whether it is dangerous to life.

The Court: He can testify what the degrees of electric current will be. The Court will sustain the objection.

Mr. Young: Before your Honor rules on that, I have several cases in point.

(Testimony of James S. Bunnell.)

The Court: Do you wish to ask any other questions?

Mr. Young: That is the only question.

Mr. Dwight: He can ask this witness how much voltage would go through a plate, if it is rigged up in that way.

Mr. Young: I have the authorities.

Mr. Dwight: I am ready to take it up.

Mr. Young: May we take it up?

The Court: All right. The Court will adjourn in chambers, and look at these authorities.

(A brief recess was taken.)

By Mr. Young:

Q. Just keeping separate in your mind the assumed case that I gave you and while back in your study of engineering and in your academic course and your subsequent study, have you studied anything when currents were dangerous and when they were not to human beings?

A. Are you talking about current voltage?

Q. I mean voltage and so on.

A. Yes, that is general practice. In your study anything over 110 volts is considered dangerous. The National [485] Underwriters' Code considers it dangerous.

Mr. Dwight: I move to strike that answer as not having shown the probable dangers and ask the jury be instructed to disregard it.

The Court: At this time it will be stricken.

(Testimony of James S. Bunnell.)

By Mr. Young:

Q. What I want to know, in college when you studied your electrical engineering, did you learn when voltages were dangerous to human beings in the course of those studies?      A. Yes, sir.

Q. Has that knowledge since come to you, since you came out from college?

A. I studied in it in college and I since found out since I came out here.

Mr. Dwight: May I cross examine on this?

The Court: You may.

#### Cross Examination

By Mr. Dwight:

Q. Have you ever studied the effect of electricity on the human body, of electricity passing through it?      A. We tested it.

Q. I ask you if you studied the cause and effect from a medical standpoint——      A. No.

Q. (Continuing) ——of electricity passing through the body of the individual to determine the injury resulting and the extent of that injury on the body?

A. I didn't study a medical course at all.

Q. Your knowledge of electricity, your experience [486] and your study has been confined, has it not, Mr. Bunnell, to the amount of voltage that passes through wires, isn't that it?

A. It doesn't pass through, between the wires.

(Testimony of James S. Bunnell.)

Q. Isn't that it?

A. Distribution of power, power utilities.

Q. In other words, you studied finally what would happen if you took an electric wire and connected it with a transformer and then at the contact point between the transformers, I think it is—in other words, you studied the proposition of how much the voltage would be upped if a transformer were put in?

A. I studied transformers, yes.

Q. You studied that, you studied transformers?

A. Yes.

Q. And you studied voltage?

A. Certainly

Q. But you never studied medicine, particularly that phase of medicine which deals with the cause and effect of the organs of the body due to a current of electricity passing through it?

A. No, sir.

### Direct Examination

(continued)

By Mr. Young:

Q. Mr. Bunnell, you say in college you did test the resistance of a human body to current?

A. Yes, sir.

Q. In there you did state what voltages were dangerous to human life?

A. We didn't take it up with dangers to human life. [487]

Q. Well, dangerous to human life, have you?

(Testimony of James S. Bunnell.)

A. We always handle it as if it was dangerous and it is dangerous.

Mr. Young: May I be permitted to ask the witness, to ask the hypothetical question?

Mr. Dwight: I renew my objection upon the further ground that this witness has definitely stated that he has no knowledge of the cause and effect upon a human being or the organs of a human body of a charge of electricity passing through it.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted.

By Mr. Young:

Q. I call your attention to the hypothetical statement with the additional fact this human being who stepped upon the iron or metal door mat had leather-soled shoes at the time he was standing upon the door mat.

Mr. Dwight: May I ask the hypothetical question be repeated and I want to listen to it?

Mr. Young: I will repeat it.

Q. Assume that an electric three-way wire, carrying a current and with a voltage of 115 volts has its source from a circuit arm of 4,000 volts on an Hawaiian Electric line fed from the Wahiawa Substation and assume further that this electric wire with a potential of 115 volts enters a house and that this line after passing through the fuse plugs

(Testimony of James S. Bunnell.)

is attached to and passes through a knife-type switch; that the two wires from the knife-type switch lead to a transformer which steps up the voltage [488] to 600 volts; that one of the wires leading from the transformer is attached to a screen on a screen door which makes contact with a copper plate on the outside of the door; that another wire leads from the transformer to a pipe ground; assume further that there is an iron or metal door mat resting on a cement walk just in front of the door and assume that it is raining; that the cement is wet; that the iron or metal door mat on the cement is wet; and assume further that a human being with leather-soled shoes dampened by water stands upon the iron or metal door mat, which is resting upon the cement; that this human being, a male, 24 years of age, grasps the copper strip on the door fairly with his bare hands; would you have an opinion, based upon your knowledge and experience as an electrical engineer, as to whether or not it would be dangerous to the life of the person so situated for another to close the switch while the person was in such a position?       A. It would.

Mr. Dwight: May I renew my objection upon the ground that it is incompetent, irrelevant and immaterial; upon the further ground that the hypothetical question does not state the facts contained in the record in this case but assumes facts outside of the record in this case and upon the further ground that the witness has definitely testified that

(Testimony of James S. Bunnell.)

he is not and cannot under any rule be called a medical expert?

The Court: Objection overruled.

Mr. Dwight: Save an exception. [489]

The Court: Exception noted.

By Mr. Young:

Q. You have? I said an opinion?

A. Yes.

Q. What is your opinion?

A. My opinion is it would be dangerous to anyone taking hold of that door.

Q. Now, assuming the same set of facts, this switch is already closed, would it be dangerous to touch that with his bare hands?

Mr. Dwight: May I have my same objection?

A. It is my opinion it would be dangerous.

By Mr. Young:

Q. Would your opinion be any different if the person was standing on dry and not wet cement?

Mr. Dwight: It is assuming facts not in this case.

Mr. Young: We have a right to ask.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

By Mr. Young:

Q. Would your opinion be any different if this person that we have assumed——

Mr. Dwight: I don't think there was any answer.

(Testimony of James S. Bunnell.)

The Court: The first question was withdrawn. You are asking another.

By Mr. Young:

Q. Assuming the same set of facts I asked you in the first hypothetical question, with the exception that [490] the person is standing upon a dry pavement, instead of wet pavement, at the time he grasped hold of the copper sheet?

A. It wouldn't be as dangerous.

Mr. Dwight: May I have my same objection and exception?

The Court: You may have.

A. It wouldn't be as dangerous as in the first but it would be dangerous because it is connected with the ground

By Mr. Young:

Q. Would you care to catch hold, being an expert?

A. I wouldn't do it intentionally.

Mr. Young: No further questions.

### Cross Examination

(Continued)

By Mr. Dwight:

Q. Electricity is dangerous at all voltages, isn't it?

A. Yes, sir.

Mr. Dwight: That is all.

Mr. Young: That is all.



(Testimony of James S. Bunnell.)

Mr. Dwight: May I move to strike the testimony of this witness upon the same grounds that I objected to it?

The Court: You may. Motion denied.

Mr. Dwight: May I have an exception to the Court's denial of my motion?

The Court: You may have your exception.

Mr. Young: If the Court will bear with me for a few minutes, we may be able to finish our case.

The Court: I will. [491]

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ROBERT B. FAUS,

called as a witness for the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Doctor Robert B. Faus, City and County Physician.

Q. You are a medical doctor, are you not?

A. I am.

Q. You are duly licensed to practice surgery in the Territory of Hawaii?      A. I am.

Q. How long have you been a physician and doctor here?      A. Since 1921.

Q. Where did you receive your academic training, doctor?

(Testimony of Robert B. Faus.)

A. I attended the University of Colorado for my undergraduate work and I took my medical work at the University of Chicago, Rush Medical School.

Q. And you graduated when? A. In 1921.

Mr. Young: Any questions on the doctor's qualifications?

Mr. Dwight: May I reserve my right to examine the doctor as to the doctor's qualifications when I examine him generally upon cross-examination?

The Court: You may.

By Mr. Young:

Q. Doctor, did you ever know a person by the name of Wah Choon Lee? [492] A. I did.

Q. What did you know about that person?

A. Knew him as a police officer of the Honolulu Police Department.

Q. Is he living now? A. He is not.

Q. When did you last see him or his body?

A. Last year, about August.

Q. Do you recall the date?

A. I think it was the 4th.

Q. Fourth of August?

A. I am not certain but I think approximate that date.

Q. Was he in person or his body?

A. No, I saw his body at the morgue.

Q. Just why were you looking at his body?

(Testimony of Robert B. Faus.)

A. I was called in to see him because I was City and County Physician. He had suffered an electric shock and he was dead.

Mr. Dwight: Just a moment. I am going to move to strike that answer of the doctor concerning an electric shock.

The Court: That may be taken as hearsay. It is stricken from the record and the jury asked to disregard it.

By Mr. Young:

Q. Now, would you know a picture of that body if you saw it again? A. I would.

Q. I show you Prosecution's Exhibits "B" and "C" in evidence. Will you examine those pictures, doctor? [493]

(Mr. Young handed the pictures, Prosecution's Exhibits "B" and "C", to the witness.)

A. (After examination of same) Yes, this is the body.

Q. Is that the body? A. It is.

Q. Now, doctor, what were your objective findings on that body? Did you examine the entire body? A. I did. I went over it.

Q. The exterior surface? A. Yes.

Q. What were your findings?

A. The only sign of external injury was an area on his thumb, this point on the right thumb.

(The witness indicates on Prosecution's Exhibit "C".)

(Testimony of Robert B. Faus.)

Q. Go ahead, doctor.

A. The superficial surface of the skin had been denuded therefrom as if it had been burned.

Q. It appeared to be burned?

A. It appeared to be an electric burn.

Q. Are you acquainted with electric burns?

A. I am.

Q. Does this picture, Prosecution's Exhibit "C", portray what you have testified to?

A. It does; the point at issue is on the right thumb.

Q. On the right thumb?           A. Yes, sir.

Q. Did you have anything to do with the taking of this picture?

A. I did. I instructed the police officer—Fraga, [494] I believe, his name is—to show that, make note of that as the only signs of external violence on the body.

Q. Have you had any occasion to study the effect of electricity? Have you had any occasion to observe the effect of electricity upon the body?

A. I have.

Q. Doctor, I am going to ask you to assume that an electric three-way wire carrying a current and with a voltage of 115 volts has its source from a circuit arm of 4,000 volts on an Hawaiian Electric line fed from the Wahiawa substation; and assume further that this electric wire with a potential of 115 volts enters a house and that this line after passing through the fuse plugs is attached to

(Testimony of Robert B. Faus.)

and passes through a knife-type switch; that the two wires from the knife-type switch lead to a transformer, which steps up the voltage to 600 volts; that one of the wires leading from the transformer is attached to a screen on a screen door, which makes contact with a copper plate on the outside of the door; that another wire leads from the transformer to a pipe ground; assume further that there is an iron or metal door mat resting on a cement walk just in front of the door; and assume that it is raining; that the cement is wet; that the iron or metal door mat on the cement is wet; and assume, further, that a human being with leather-soled shoes dampened by water stands upon the iron or metal mat, which is resting upon the cement; and that this human being, a male 24 years of age, grasps the copper strip on the door fairly with his bare hands; would you have an opinion, doctor, based upon your know- [495] ledge and experience as a medical doctor, as to whether or not it would be dangerous to the life of the person so situated for another to close the switch while he was in that position?

Mr. Dwight: May I have my objection upon the same grounds stated; that the hypothetical question is based upon facts not in the record; facts entirely out of the record, never adduced in the trial, therefore an improper hypothetical question and therefore incompetent, irrelevant and immaterial?

The Court: You may. Objection overruled.

(Testimony of Robert B. Faus.)

Mr. Dwight: Save an exception.

The Court: Exception noted.

By Mr. Young:

Q. You have an opinion with those assumed facts? A. Yes, sir, I have.

Q. What is your opinion?

A. With the circuit closed, with a man standing on a metal door mat that is grounded, with wet feet and he completes the circuit by touching the plate on the door, he would receive the full charge of current available from that transformer and if that is as high as 600 volts, it would be imminently dangerous to life.

Q. It would be imminently dangerous to life?

A. Yes, sir.

Q. Would the opinion be any different if we assume the same set of facts, except that the person was standing upon wet cement?

A. Well, if he is grounded. That is all; that is sufficient. He is well grounded if he is standing on [496] wet cement and he would receive a shock dangerous to life.

Q. Would such a circuit be dangerous to life for anyone to touch it under these conditions?

A. In my opinion, it would.

Q. Now, doctor, assuming these facts and assuming the findings that you have testified to as to these burns upon the hands of the deceased, would you have an opinion as to whether or not this electrocution was caused by a contact with the door?

(Testimony of Robert B. Faus.)

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial; upon the further ground that the hypothetical question has not been placed fully to the witness. It leaves me to an assumption. Counsel has asked two or three hypothetical questions with different facts. He turns around; I don't know what facts he is referring to and the witness naturally would be unable to know what facts he is referring to. For that reason I object.

The Court: Do you understand the question?

Mr. Dwight: Defendant ought to know what question you are talking about.

Mr. Young: The defendant is here.

The Court: Will you make it definite in that last question?

By Mr. Young:

Q. I will read another hypothetical question to you doctor: (Reading) Assuming that an electric three-way wire, carrying a current and with a voltage of 115 volts, has its source from a circuit arm of 4,000 volts on an Hawaiian electric line fed from the Wahiawa substation; [497] and assume, further, that this electric wire, with a potential of 115 volts, enters a house and that this line after passing through the fuse plugs is attached to and passes through a knife-type switch; that the two wires from the knife-type switch lead to a transformer, which steps up the voltage to 600 volts; that one of the wires leading from the transformer is attached

(Testimony of Robert B. Faus.)

to a screen on a screen door, which makes contact with a copper plate on the outside of the door; that another wire leads from the transformer to a pipe ground; assume, further, that there is an iron or metal door mat resting on a cement walk just in front of the door and assume that it is raining; that the cement is wet; that the iron or metal door mat on the cement is wet; and assume, further, that Wah Choon Lee, the body which you examined, when it was alive had leather-sole shoes, which were dampened by water, and that Wah Choon Lee stood upon that iron door mat, which is resting upon the wet cement, and that this Wah Choon Lee grasped the copper strip on the door firmly with his bare hand and that thereafter the switch was closed, completing the circuit, would you have an opinion, based upon your knowledge and experience as a medical doctor, as to whether or not the burn, which you have testified to on the hand of the deceased, was caused by such a contact——

Mr. Dwight: May I have my same objection and exception?

By Mr. Young:

Q. (Continuing) ——with the copper plate on the door?

The Court: Mr. Dwight may have his same ob-  
[498] jection. The Court overrules the objection.  
Exception noted.

A. It is; it is my opinion that is where the current entered his body when the circuit was closed.



(Testimony of Robert B. Faus.)

Mr. Young: No further questions.

Mr. Dwight: No questions, doctor.

The Court: Excused, doctor.

Mr. Young: This is our last witness. It will only take a few minutes.

The Court: Last witness.

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YOUNG CHOON LEE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Young Choon Lee.

Q. How old are you, Mr. Lee?

A. Thirty-three.

Q. Where do you live?

A. 835 19th Avenue.

Q. What is your descent, your nationality.

A. Korean.

Q. Are you full-blooded Korean?

A. Yes, sir.

Q. Did you have a brother by the name of Wah

Choon Lee? A. Yes.

Q. Is he living now? [499]

A. No, sir.

Q. Would you know a picture of him if you saw it again, of his body? Take a look at this, Prosecu-

(Testimony of Young Choon Lee.)

tion's Exhibit "B" in evidence. Is that your brother, Wah Choon Lee?

(Mr. Young handed the picture, Prosecution's Exhibit "B", to the witness.)

A. (After examining the same) Yes, sir.

Q. How old was he at the time of his death?

A. Twenty-four.

Q. Do you know how his health was at the time of his death? A. He was in good health.

Q. When is the last time you saw him before his death? A. August 3, 1937.

Q. About what time?

A. About ten to six in the evening.

Mr. Young: Ten to six. No further questions.

Mr. Dwight: No questions.

The Court: Excused.

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Mr. Young: If the Court will excuse me just a moment, I will check my record briefly. I have an Exhibit "H" that I offered in evidence. I believe your Honor has ruled against, that it will not be admitted in evidence.

The Court: That is correct.

Mr. Young: It is marked for identification. The Territory rests.

The Court: Let the record show the Territory rests.

The plaintiff rested [500]

Mr. Dwight: Just before the Territory rests, I would like to recall Mr. Caminos for the purpose of calling to his attention certain statements that he made for further cross examination, particularly the statements that he made, concerning the statement that he made as to the person opening the door.

The Court: Proceed.

Mr. Dwight: If counsel is willing to waive that and let me read from his evidence that was given on January 28, 1938——

The Court: 24th, that was.

Mr. Young: The territory has rested.

Mr. Dwight: I notified counsel before that I wanted to recall him.

Mr. Young: I think Mr. Caminos ought to see the statement.

Mr. Dwight: I don't want this jury to come back this afternoon. I have innumerable motions to make. I will withdraw my request that Caminos be recalled.

The Court: The prosecution has now rested.

Mr. Dwight: At this time I move to strike the testimony of Officer Burns or so much thereof as occurred subsequent to the time that he testified the defendant asked him what he meant by breaking into this house, to-wit, everything that he testified to subsequent to that point when the defendant entered the room downstairs upon the ground that the testimony is incompetent, [501] irrelevant and immaterial; upon the ground that it was procured

in violation of the defendant's rights under the Constitution, the 4th and 5th Amendments, and upon the further ground that at the time he was a trespasser upon the premises of the defendant in violation of the defendant's rights under the Constitution of the United States.

The Court: Motion denied.

Mr. Dwight: May I save an exception?

The Court: Exception noted.

Mr. Dwight: I move to strike the testimony of Lou Rodgers upon the ground that it affirmatively appears from the evidence that she was an accomplice; upon the further ground that the testimony of Lou Rodgers was discredited and for that reason cannot be accepted by this Court or by this jury. I further move to strike the testimony of Lou Rodgers upon the ground that any evidence that she may have given in this particular case was based entirely upon the electrical equipment that was ordered—the evidence—I will put it that way—the evidence that was suppressed, ordered suppressed by this Court and upon the further ground that her entire testimony was adduced at this trial from knowledge gained by the searching officers and the law officers of the City and County of Honolulu when they made an illegal and invalid search in contravention of the defendant's rights under the Constitution. (To the Court) You want to rule on that? [502]

The Court: Motion denied.

Mr. Dwight: May I save an exception?

The Court: Exception noted.

Mr. Dwight: I further move to strike the testimony of Kiehm—I can't think of his first name—John Kiehm upon the ground that his evidence was given in violation of the defendant's rights under the Constitution and the 4th and 5th Amendments; upon the further ground that his entire evidence was procured as a result of information gained by the law officers after making an illegal search of the premises of the defendant in violation of her rights under the Constitution and that all of Mr. Kiehm's testimony was procured from that particular knowledge and from no other source whatsoever; and upon the further ground that the evidence affirmatively appears that Mr. Kiehm was an accomplice in this particular case and that his testimony was discredited in this Court and that, therefore, his testimony becomes incompetent, irrelevant and immaterial for any purpose.

The Court: Motion denied.

Mr. Dwight: Save an exception.

The Court: Exception noted.

Mr. Dwight: I further move to strike the testimony of Penland, Miss Penland, upon the ground that her evidence given here was obtained and knowledge of those facts that she testified to were obtained in violation of law and violation of the rights of the defendant under the [503] Constitution of the United States; upon the further ground

that the defendant—I mean that Miss Penland—the evidence affirmatively shows Miss Penland to be an accomplice and that her testimony before this Court has been discredited and that her testimony, therefore, becomes incompetent, irrelevant and immaterial for any purpose in this case.

The Court: Motion denied.

Mr. Dwight: I have already made my motions to strike the doctors' testimony.

The Court: Yes, you have.

Mr. Dwight: At this time, may it please the Court, I move that the Court direct the jury to return a verdict of not guilty upon the ground that the evidence—Before I make that motion, may it please the Court, I will ask the prosecution to elect upon which count of the indictment they intend to proceed.

Mr. Young: That is not being submitted to the jury. I submit the original case of 11 Hawaii and leave it up to your Honor's discretion.

The Court: Looking over the counts, do you want to—

Mr. Young: We want to submit it to the jury.

Mr. Dwight: I take it, the record shows the prosecution refuses to elect.

Mr. Young: At this time.

Mr. Dwight: At this time. I save an exception to the refusal of the prosecution to elect and assign that as error. [504]

Mr. Dwight: Now, at this time I move for a directed verdict of not guilty upon the ground that

the evidence fails to prove beyond a reasonable doubt that the defendant in this case at the time and place mentioned in the indictment killed or murdered Wah Choon Lee; upon the ground that there is no evidence tending to show malice; that the record in this case fails to show—affirmatively shows, if it please the Court, that if the installation of this equipment was the cause of death, that the evidence affirmatively shows lack and entire lack of criminal intent; upon the further ground that the prosecution has failed to prove beyond a reasonable doubt criminal intent of this defendant at the time; upon the further ground that the crime committed in this case was justifiable in that Wah Choon Lee at the time that he met his death was a trespasser; upon the further ground, may it please the Court, that the evidence affirmatively shows that the electricity did not kill Wah Choon Lee; that the prosecution has failed to prove that electricity from that door killed Wah Choon Lee; upon the further ground, may it please the Court, that no valid arrest was made by Officer Burns or by any police officer under the laws of the Territory of Hawaii, and for that reason Wah Choon Lee and the police officers were trespassers upon the premises of the defendant in violation of her rights under the constitution; upon the further ground, may [505] it please the Court, that section—can I have the Revised Laws?—several sections—

The Court: 5404 is one of them.

Mr. Dwight: (Continuing) that Sections 5404 and 5403 of the Revised Laws of Hawaii 1935 is unconstitutional and void, if it is applicable in this case, in that it contravenes the amendment to the Constitution that provides for security of persons in case of arrest, which is the 4th Amendment; upon the further ground, may it please the Court, that these sections contravene the common law of the United States and must be strictly construed; and upon the last and final ground that the prosecution has failed in all respects to show a violation of any law of the Territory of Hawaii by the defendant in this case. I will argue it at any time convenient to the Court. I will argue.

Mr. Young: If the Court is ready to rule, I am ready to listen.

The Court: Motion denied.

Mr. Dwight: Do I understand that the Court has denied the motion?

The Court: Yes.

Mr. Dwight: Very well, save an exception.

The Court: The exception may be saved and noted. The matter of continuance?

Mr. Dwight: Monday morning.

The Court: Monday morning, nine o'clock. The Court stands adjourned until Monday morning [506] at nine o'clock. Under the same instructions, the jury is not to discuss this case with any outsider. Report any indiscretions. The Court stands adjourned until Monday morning at nine o'clock.

(A recess was taken until Monday, February 14, 1938, at nine o'clock a. m.) [507]



Honolulu, T. H., Feb. 14, 1938.

(The trial was resumed at 9:20 a. m.)

The Clerk: Criminal 14,332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren.

Mr. Young: *Read* for the Territory. Stipulate the defendant and the jury are present.

Mr. Dwight: So stipulated. We are ready for the defendant.

The Court: Let the record so show. Mr. Clark, will you read the Court's instruction to the jury in reference to a view of the premises?

(The reporter read as follows:)

"The Court: The Court has learned that the jury desires a view of the premises and that neither attorney objects to this view. The Court, therefore, orders a view of the premises immediately and will be back here by twelve o'clock noon. The purpose of the view is to have you observe the premises, the buildings, and the arrangement of the rooms and staircases and doors in order to assist in considering the testimony and the evidence of the various witnesses. You must understand that your view is simply for the purpose of observing distances and the general arrangement of the house and grounds. You are instructed that you cannot search for evidence to support or to override any testimony in this case. You must not observe or take into consideration the arrangement of the furniture and fixtures as you ob-

serve them today or any marks or the location [508] of any fixtures attached to the building. Gentlemen of the Jury, you cannot observe, consider or look for any marks or any fixtures within the building.”

The Court: Upon the return back to Honolulu the Court will adjourn until nine o'clock tomorrow morning. The Court now adjourns and asks the jury to prepare themselves to leave immediately for Wahiawa on one of the Rapid Transit buses.

(The jurors left the court-room and boarded a Rapid Transit bus parked in front of the court house.)

#### In Chambers

(Respective counsel being present in chambers, the following proceedings were had:)

Mr. Dwight: The defendant having her own transportation, I will accompany the jury and the defendant will go to Wahiawa in her own automobile.

The Court: You wish her to go separately in her own automobile. You have no objection?

Mr. Young: I have no objection.

The Court: The Court permits the defendant to ride independently in her own car. She will wait for us at the Wahiawa Station. If she doesn't appear, it is *assume* she has waived it.

Mr. Dwight: I don't know whether I will catch her outside.

(At 9:37 a. m. the Court, the jury, Mr. Young, Mr. Dwight, Bailiff Louis Kahana-moku, Investigator John Jardine, Mrs. Olga Sezenevsky, Clerk of the [509] Court, and Mr. George R. Clark, Shorthand Reporter, left by Rapid Transit bus from the front entrance of the Judiciary Building for the premises of the defendant on Muliwai Street at Wahiawa. At 10:30 o'clock a. m. the bus arrived at the Wahiawa court house on California and Kuahiwi Avenues and parked there a few minutes. The Court, Mr. Dwight and Mr. Young alighted from the bus and spent sometime at the court house and vicinity. At 10:58 o'clock a. m. the Court, Mr. Dwight and Mr. Young returned to the bus and it was stipulated the jurors were all present. Thence the bus proceeded and turned right into Kuahiwi Avenue to a point on said avenue directly makai of the defendant's premises and came to a stop. Thereupon the following proceedings were had:)

The Court: Now, gentlemen of the jury, in viewing anything on the premises or in the house you are not to comment at all, even amongst yourselves, and not to point anything out. View the premises and house silently. If you want to ask any questions, call them to the attention of the Court in the presence of the entire jury, the defendant and the attorneys. Don't talk or point out anything among yourselves.

Mr. Dwight: Or talk with anybody else.

(At 11:00 o'clock a. m. the bus started, thence proceeding along Kuahiwi Avenue, turning left and crossing the railroad track around the bend, thence continuing to the left in the Waia- [510] lua direction into Muliwai Avenue and came to a stop and parked upon Mr. Dwight saying: "Stop right here by the sisal plant (on the left-hand side)". Thereupon the Court, the jury, both attorneys, the clerk, the bailiff, Investigator Jardine and the reporter alighted from the bus, viewed the sisal plant and surroundings, thence proceeded through the walk leading in the front entrance of the premises of the defendant, were met at the front door by the defendant, thence into the sitting room downstairs to the right of the entrance, thence up the stairway by the front entrance, into the parlor upstairs, arriving at 11:07 o'clock a. m. At 11:15 o'clock a. m. the Court, counsel, the jurors and court staff completed an examination of the upper floor and the entire premises and returned to the bus. Upon inquiry by the Court whether there was anything further the jurors desired to view, there was no response. Thence the bus proceeded along Muliwai Avenue to and turning left into California Avenue, thence along the same into Kamehameha Highway, thence along same and to the Judiciary Building and court-room at 11:45 o'clock a. m. Thereupon the following proceedings were had:)

The Court: You have no objection to adjourning without the presence of the defendant?

Mr. Dwight: I will so stipulate that the Court may adjourn in the absence of the defendant.

The Court: Let the record so show. The Court [511] will adjourn until tomorrow morning at nine o'clock. The jury will follow the same instructions not to discuss the case with any outsiders. Adjourn until tomorrow morning at nine o'clock.

(A recess was taken until Tuesday, February 15, 1938, at nine o'clock a. m.) [512]

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Honolulu, T. H., February 15, 1938.

(The trial was resumed.)

The Clerk: Criminal 14332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren.

Mr. Young: Ready for the Territory. Stipulate the defendant and jury are present.

Mr. Dwight: Ready for the defendant and so stipulated.

The Court: Let the record so show.

Mr. Dwight: May it please the Court, at this time I would like to read to the jury the questions and answers of Caminos on cross-examination concerning the one fact as to who opened the door. I am reading from the official Transcript of the Proceedings Had and Testimony Given at the Hearing on Defendant's Motion to Suppress Evidence and for the Return of Property, certified to, may it

please the Court, by George R. Clark, the Official Shorthand Reporter of this Court.

(Mr. Dwight read as follows:)

“Q. You say ‘Speed’ opened the door?

A. Yes.

Q. You are sure about that?

A. I am sure about that.

Q. You are sure this man Burns was behind in that little entryway?

A. In the front part, inside.”

Mr. Dwight: I will take the stand. [513]

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Witnesses for the Defendant

CHARLES B. DWIGHT,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination:

My name is Charles B. Dwight and I am licensed to practice in all the courts of the Territory and have been so licensed since November 1922. I was born here, raised in the Territory, educated in the public schools, at Georgetown University. I am admitted not only in all the Courts of Hawaii but in the United States,—the Ninth Circuit Court of Appeals, Supreme Court of the District of Columbia, the Court of Appeals of the District of Columbia and the United States Supreme Court. I have served as Secretary to the Delegate to Congress, the late

(Testimony of Charles B. Dwight.)

Prince Kalaniana'ole, from 1919 until his death. I, by resolution of Congress, was placed in charge of the Office of the Delegate and then I served as Secretary to the Honorable Harry Baldwin, Delegate to Congress from Hawaii. I have also served as Deputy Attorney General of the Territory of Hawaii, in charge of criminal prosecutions, and served as such from 1923 until August or September of 1926. Subsequent to 1926 I engaged in the general practice of law in private practice. The other day, gentlemen, I admitted to you that I was Mrs. Warren's counsel for eleven years. In checking that record, I find that Mrs. Warren first came into my office with her son, who had just come back from college, on April 24, 1932. She came in then concerning the acquisition of some property to establish a business store [514] and restaurant on the highway leading to Schofield Barracks Gate. That proposition did not go through because of formal complaints made by the authorities, and the boy returned to college. She has been in to see me on several other occasions concerning professional matters. On the 4th of June, 1936, she came into my office with Miss Rodgers and was in my office but a few minutes concerning the bond fee that had been charged by the bondsman who bailed the defendant Penland out of jail. The case had been set for trial in the Wahiawa District Court for the 9th of April—9th of June, 1936. I requested that Miss Penland return to my office and at that time give me the in-

(Testimony of Charles B. Dwight.)

formation relative to the charge. She came back into my office on June 8th, at which time we discussed her connection with the case, because she was the only one involved in the case.

Mr. Young: If your Honor please, at this point I object to the conversation in the office, unless the record shows that the defendant waives the privilege of communication between counsel and client.

Mr. Dwight: I am not disclosing the nature of the conversation. I do not intend to violate the oath and violate any of the ethics of my profession. I do not intend to disclose confidential communications.

Mr. Young: I withdraw my objection.

The Court: Proceed.

Mr. Dwight: (Continuing) After the conversation was had, I then informed Miss Rodgers that she— [515] that we would demand a jury trial in her case and that we would move to dismiss as to the other defendants. They left the office and Miss Penland never returned to my office until the 9th—the 11th of September, 1936, at which time she was still residing with Mrs. Warren. At no time did any conversation occur in my office in connection with any electrical apparatus or the installation of any apparatus of any kind. Nothing, even in the nature of the establishment of any electrical apparatus, in conversation occurred at that time or at any time, either between me and Mrs. Warren and me or Miss



(Testimony of Charles B. Dwight.)

Rodgers or myself with either or both of them together. I have a rule in my office that any person that comes into that office must disclose his name and the nature of his business and that name is taken and the time when he comes is put down. If any further information is requested, I give that information to my office. I keep it on a card similar to the card that I had in court the other day and it contains the name of the person, the time of the visit and the purpose of the visit. I have kept that card system for eleven years and I do refer to them at times. I had Mrs. Warren's card in court the other day and I have been looking for it. I think it is up in the Supreme Court Library because I left here and went up and looked at the books, or I would have had it here this morning. Now, concerning the rule in my officè, I also have a rule, which is rigidly enforced, which if people not of good business repute come into my office, that my private office door is kept open; if anyone in my office closes that door, [516] that the girls in the office come in there under the guise of getting a check or book there, under instructions to keep their eyes open or ears open. Now, at no time did Mrs. Warren ever say to me as she was leaving my office, as she was going out in the hall, that she was going to electrify the house, and that I answered "Okay by me." I think that is all.

(Testimony of Charles B. Dwight.)

Cross Examination

By Mr. Young:

Q. Mr. Dwight, isn't it a fact that Miss Rodgers was for a time your client?

A. She was. Miss Rodgers was my client from the 4th day of June until after the trial in Wahiawa and in that respect I might add that the trial did not take place on the 9th day of June. It was continued by the judge until the 12th day of June, then I went to Wahiawa and was in the court-room and there in the court-room I again met Miss Rodgers, and that was when I demanded the trial by jury. That was the end of the case; they nollod the case.

Q. Has she ever engaged you professionally before the 4th day of June, 1936?      A. Yes.

Q. Didn't you just say that was the first time?

A. In connection with this matter, Miss Rodgers came in to see me in December of 1935. She had been in two automobile accidents, one accident that occurred on Kapiolani Boulevard when she was riding in an automobile that was pushed off the road by one of those big buses, and then the other accident that occurred prac- [517] tically at the same time. In each one she got slight injuries and got treatment. Then she was in another automobile accident up here in McInerny tract. She was riding in a car that collided with another automobile.

Q. So you did act as her attorney before the 4th day of June?

(Testimony of Charles B. Dwight.)

A. I did. I prepared a suit and she signed it but she never brought the costs and the suit was never filed.

Q. Now, when she visited your office before the 4th day of June, did you close or did not close the doors on the various occasions she had been there?

A. I have never had my doors closed at any time she was in my office.

Q. You considered her a person of ill repute?

A. Yes.

Q. Have you ever closed the doors when "Speed" Warren visited your office?           A. Yes.

Q. For the same reason that you kept it open in regard to Miss Rodgers?

A. What is that?

Q. You kept the door open for the same reason that you kept it open in regard to Miss Rodgers?

A. Anybody but a reputable business man; anyone except my good business clients, I didn't.

Q. I mean before the trial started did you consider her reputable?

A. Yes, I considered her reputable.

Q. But you still left the door open?

A. Why, certainly. [518]

Q. Letting the door open or closed is really no test of what you consider a person to be?

A. Unless they are business people and connected with business offices or when you came in or when anybody like you came in or anybody connected with any decent business establishment down-

(Testimony of Charles B. Dwight.)

town, that door is open. The door is closed if we want to talk confidentially.

Q. And so if it is a decent business man, president of a bank, you wouldn't let your private secretary listen?

A. They have the files; they have the records; they have the notes on the statement.

Q. Do you usually close the door or do you not close the door?

A. Generally I keep the door open.

Q. Is that true at all times?

A. Generally at all times. If somebody comes in that wants to talk confidentially and somebody of good repute, that door is closed. That has been my practice.

Q. There has been some evidence in this case that you had a conversation with "Speed" Warren concerning a raid out there in the first part of June, 1936. Do you recall any such conversation?

A. No, the only conversation that we had concerning the raid in June was the conversation that we had on the 4th of June; that was concerning the bail money and the conversation on the 8th of June concerning the method by which we would approach our defense in the pending cases in the District Court.

Q. Now, Miss McGuire testified her instructions were with "Speed", in case of a raid, to call you. Did you [519] ever have any such arrangement with "Speed"?

(Testimony of Charles B. Dwight.)

A. No, excepting she was my client.

Q. Did you ever have any arrangement in case of a raid to call you immediately? A. No.

Q. You deny it? A. I deny it.

Mr. Young: Now, Mr. Dwight, will you please answer my questions? On my questions, please confine your answers to my questions?

Mr. Dwight: Will you address the Court, Mr. Young?

By Mr. Young:

Q. You say that you do not have those cards in Court that you kept in regard to Mrs. Warren?

A. I did have them the other day.

Q. How about Miss Rodgers? Did you have them, too?

A. I did have Miss Rodgers' card; Miss Penland, I have; Mrs. Warren's card for 1932 up to 1936. I think Mrs. Warren has probably two or three cards; each runs right down, fill up the card, take card 2 and card 3.

Q. You remember personally that Miss Rodgers was in your office?

A. I know definitely. First, she came in; she couldn't talk; she *same* some kind of a pain in her chest. I remember that definitely. She wanted to sue somebody and sue somebody quickly because they were wrong. I remember that distinctly. I got the facts from her companion but I can't recall whether he was driving the car she was in or

(Testimony of Charles B. Dwight.)

whether he was her companion at [520] the time or whether he was driving or witnessed the accident. I remember distinctly there was a Japanese boy that came in with her. He was either the driver of the car or riding in the car when she was hurt. I got the facts from him and prepared the suit. She came back several days later and signed the complaint, which I had the other day. That was in December, then she went away; I never saw her again.

Q. Well, do you remember whether or not on each occasion she was in there the door was open or closed?

A. I can only recall that from my general routine.

Q. Practice?           A. Yes.

Q. In other words, your general rule is to leave the door open?

A. Yes, and for my stenographers to keep their ears open. If the door was closed, one of those girls will come right in and open it.

Q. Is it possible the door might have been closed for a very short time on some visit of Lou Rodgers?

A. I don't think so because one look at her, you could see.

Q. All the time "Speed" has been to your office—I believe you testified she has been your client since 1932?           A. Yes.

Q. Do you recall whether the door has ever been closed when she has been in your office?

(Testimony of Charles B. Dwight.)

A. It has been closed since this indictment has been brought by the Grand Jury. You want me to explain the reason? [521]

Q. If you want to tell the jury.

A. Information got out from my office into yours.

Q. That is your conclusion.

A. That is my assumption.

Mr. Young: I ask this answer be stricken as a conclusion of the witness; that is a conclusion that information got to our office.

By the Court:

Q. That is your conclusion?

A. Yes, that is my conclusion; the conclusion is the reason.

The Court: The jury is instructed that statement is really the reason.

A. And I might add, it was neither you nor Mr. Jardine that carried the news.

Mr. Young: I still ask this be stricken and the jury instructed to disregard it.

The Court: The Court has already instructed the jury. The motion is denied. The jury will not take his conclusion as evidence, will disregard it as evidence but merely as his reason.

By Mr. Young:

Q. If I understand your testimony correctly, Mr. Dwight, before June 4th or rather before the date of the indictment, if that was your answer, to

(Testimony of Charles B. Dwight.)

your best recollection, the doors in your office had never been closed in your office while "Speed" Warren was in a conference in the office with you; that is your testimony?

A. That is my testimony; that is correct. There may have been sometime when the doors were closed. If [522] they were closed, it wasn't very long before a girl came in and opened it.

Q. But there might have been something said while the doors were closed?

A. Might have been.

Q. You can't recall from the date of the indictment. June 4th, when Miss Rodgers and "Speed" Warren came in there, do you recall whether or not "Speed" Warren had been in your office from the date of the indictment?

A. You mean murder indictment?

Q. I mean from June 4, 1937, until the date of the indictment, which was sometime in August.

A. Yes, she was in on the 9th day of September—I mean on the 11th day of September.

Q. Do you recall whether or not the door was closed at that time?

A. No, you mean—you are speaking of the raid in June?

Q. June 4th of 1937.

A. Of last year?

Q. When Lou Rodgers came into your office about equipment—that was in 1936—up until the



(Testimony of Charles B. Dwight.)

date of the indictment, which was August, 1937, had "Speed" Warren been into your office?

A. Yes.

Q. Approximately how many occasions?

A. She was in in September; she was in in November—she did not, she came in early in December, then she didn't come in until the middle of January.

Q. Do you recall whether or not on those occasions [523] the door was closed or open when she was in there?

A. I don't but I would say that they were generally open. There might have been an instance where it was closed.

Q. It might have been, might not, that is your best recollection?

A. During that period it might and it might not have been Mrs. Warren by herself.

Q. Why is it you distinctly remember on June 4th it was definitely open and on other occasions you are not so sure?

A. Because when any prostitute—I am speaking of Miss Penland and Miss Scott—comes in, the instructions are to keep their ears open.

Q. Lou Rodgers came in with "Speed" Warren?

A. She did come in with "Speed" Warren; she was the one that caused the doors to remain open.

Q. You left them open because of Miss Rodgers?

A. Yes.

(Testimony of Charles B. Dwight.)

Q. Your practice had been before that date to leave them open with "Speed" Warren, too?

A. I generally leave them open. If "Speed" came in, they might have been closed. I know one day that Mr. Jardine came into my office, but when Mr. Jardine came into my office the door was being opened and Mrs. Warren was walking out, shortly afterwards being opened by a girl in the office.

Q. Now, as Mrs. Warren's attorney, did you know what her business was on the 4th day of June, 1937?

A. Yes, I knew what her business was. [524]

Q. On the 4th day of June, 1937?

A. Yes, I did.

Q. Do you know what her business was just prior to the indictment of August, 1937?

A. I had no idea. She communicated with me concerning the incidents of the 4th of June.

Q. Do you know where she has lived?

A. The same place; she has lived there for the last eleven years.

Q. To your knowledge she has lived there all the time?

A. Are you speaking of recent time?

Q. Up until 1937.

A. From 1936—I will put it this way: On June 4, 1936, she was living on Muliwai Street; on August 3rd—Is that the date that you want?

Q. August 3, 1937, please.

(Testimony of Charles B. Dwight.)

A. August, 1937, she was living on Muliwai Street.

Q. Did you know what her business was on that date, August 3, 1937, or August 2, 1937?

A. I couldn't say definitely because she did not tell me.

Q. Did you know of your own knowledge?

A. No, I did not know of my own knowledge.

Q. You had no idea of what type?

A. Certainly I had an idea.

Q. But she had never told you?

A. She never told me. I knew what her business was on June 4, 1936.

Q. You knew what her business was then?

A. Certainly; she told me. [525]

Q. Did she tell you at any time after that on any of her conferences with you what her business was from June 4, 1936, to August 3, 1937? Did she at any time communicate the nature of her business?

A. No, never communicated her business.

Q. From June 4, 1936, until August 3, 1937, did she seek advice concerning her business?

A. No, never. What do you mean by "business"?

Q. Any business she was in.

A. I told you she came down with her son concerning establishment of a store; she came down regarding the establishment of a store; she came down regarding the payments of the costs of the building. I did not tell you about her son making

(Testimony of Charles B. Dwight.)

the application because of the protests by the Chief of Police against the license filed in the Liquor Office. She was denied a license. They came in concerning the sale of the property to a Chinese person that runs the store in Wahiawa. The Chinese bought the business and the property from them and there was a suit subsequent to that concerning the question of compensation insurance, as to whether she was liable for compensation insurance; I mean in the operation of the store, which she really didn't get to operate; that we discussed that at various times.

Q. I take it, that is the only nature of the business that you had with her?           A. Exactly.

Q. Never any conversation or anything of what she was doing upon the premises there?

A. There was absolutely nothing about what she was [526] doing on the premises or anybody.

Q. She never consulted you from June 4, 1936, until August 3, 1937, about that matter?

A. Yes, that is true. She never consulted me about anything else except what I have told you about.

Q. After August 3, 1937, did she tell you what the nature of her business had been out there?

A. She did.

Q. Now, did Lou Rodgers ever come in with "Speed" to your office, other than on that one date on June 4, 1936?           A. June 8, 1936.

Q. I think your testimony was she had on June 4th?

(Testimony of Charles B. Dwight.)

A. June 4th was the first time. You asked for the other times.

Q. Yes, if she had been in with "Speed".

A. Yes, she came in on June 4th, on June 8th and on the 11th day of September, 1936, and she has never been into my office after the 11th day of September, 1936.

Q. I take it then, from your testimony, Mr. Dwight, that you deny it?

A. And, of course, this time when this automobile accident that I talked about here, an automobile in which she and Mrs. Warren were riding, that automobile accident; they were both in the car. I am speaking of the one on Kapiolani Boulevard. Mrs. Warren's car was going out towards Wahiawa; it was in the early evening, just after dusk, and the Honolulu Motor Company coach was coming in from Schofield, rather, from Pearl Harbor, was passing another car, swerved way over and forced Mrs. Warren's [527] car out into the ditch and went down into a hole on the side of the road. The accident with the Japanese was up on Alewa Heights.

Q. And at that time you don't know what type of business Mrs. Warren was operating at her home or whether she was operating any business to your knowledge?

A. As far as I know, she was operating a legitimate restaurant business.

Q. And nothing else?

(Testimony of Charles B. Dwight.)

A. I think they called it the Highway Cafe.

Q. And nothing at her home?

A. Nothing at her home.

Q. At that date?      A. At that date.

Q. But you did know at that date Lou Rodgers was a prostitute?      A. June 4th?

Q. No, at the time they came in at the time of the automobile accident.

A. No, except she looked the part. The first time I knew she was a prostitute was when she told me.

Q. On the 4th of June?

A. On the 4th of June, 7th, 8th of June.

Q. I understand from your testimony, Mr. Dwight, that you deny that Lou Rodgers—you do not deny that Lou Rodgers came into your office and “Speed” Warren, the defendant, came into your office?      A. Yes.

Q. But you deny at that time there was any conversation for the purpose of keeping drunks, soldiers and [528] police away?

A. I absolutely deny that.

Q. You deny as they were leaving you said it was “Okay with me; I don’t think they can do anything to you”?

A. Yes, I absolutely deny that.

Q. And at no time had “Speed” Warren ever consulted you concerning the operation of any type of business upon her premises at Muliwai Street?

A. Yes, sir. I deny that. The only time any conversation occurred concerning the operation of anything at Muliwai Street was in connection with any

(Testimony of Charles B. Dwight.)

pending matter that was in Court at the time, to-wit, the pending matter of June, 1936, and the pending matter as the result of this incident of August 3rd. I had no concern.

Mr. Young: No further questions.

The Court: Redirect?

Mr. Dwight: I can't redirect myself. Mr. Young, will you take the stand?

Mr. Young: Rather unusual procedure.

Mr. Dwight: Please take the stand?

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KENNETH YOUNG,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dwight:

Q. What is your name?

A. Kenneth Young.

Q. And what is your official position?

A. Assistant Public Prosecutor, City and County of Honolulu. [529]

Q. And as such, have you knowledge of all prosecutions instituted by your office against people who allegedly commit crimes in this jurisdiction, City and County of Honolulu?

A. I do not under the present system that we have. It just depends which prosecutor presents cases to the Grand Jury, and the work is divided between the prosecutors there and some cases I

(Testimony of Kenneth Young.)

have absolutely no knowledge of. The cases I do have knowledge of are cases I work on.

Q. Will you state whether or not a formal charge of murder in the second degree has been lodged against Lou Rodgers for the death of Wah Choon Lee on August 3, 1937? Will you state, from your knowledge and experience?

Mr. Young: I object to the question as calling for my conclusion and not a matter I have any peculiar knowledge of. It is based upon hearsay. The proper source is other places. May I answer the question?

The Court: Read the question.

Mr. Dwight: I will withdraw the question.

The Court: The question is withdrawn. There is nothing before the Court.

By Mr. Dwight:

Q. Can you state whether or not a formal charge of murder in the second degree has been lodged by the Office of the Public Prosecutor against Lou Rodgers for the death of Wah Choon Lee on August 3, 1937?

Mr. Young: I object to the question as being incompetent, irrelevant and immaterial. Whatever is being placed against Lou Rodgers is not material [530] to this case; further, it is calling for a conclusion of myself. I have no basis for giving any more.

Mr. Dwight: I submit it on the question of accomplices. That goes to the credibility of the witnesses.



(Testimony of Kenneth Young.)

The Court: Objection overruled—Just a minute. Withdraw that. I sustain the objection.

Mr. Dwight: May I save an exception?

The Court: Exception noted.

By Mr. Dwight:

Q. Will you state whether or not, within your own knowledge as Assistant Public Prosecutor of the City and County of Honolulu, that any charge of murder in the second degree—was any charge of murder in the second degree lodged against Lou Rodgers in connection with the death of Wah Choon Lee on August 3, 1937?

A. Counsel insists upon asking the question. I have no knowledge of any charge being placed. I do not know. It is not my official duty to know those things.

Q. Will you state whether or not, as Assistant Public Prosecutor of the City and County of Honolulu, that formal charges of murder in the second degree have been placed against Kiehm, the witness that was on the stand here, in connection with the death of Wah Choon Lee on August 3, 1937?

Mr. Young: I object to the question as incompetent, irrelevant and immaterial, not within the issues of this case as to what charges have been placed against anyone else. It is calling [531] upon the witness for a conclusion, which I cannot give. I submit the question is improper and incompetent.

Mr. Dwight: May it please the Court, the question of the weight of testimony to be given to ac-

(Testimony of Kenneth Young.)

complices is very material in a case of this kind and the jury have a right to get all of the facts upon the question of whether or not certain witnesses were accomplices, and if they were, they are entitled to receive from this Court a certain instruction in regard to that type of testimony and that is the reason why I submit it is vital in a case of this kind.

The Court: Objection sustained.

Mr. Dwight: Save an exception.

The Court: Exception noted.

By Mr. Dwight:

Q. Will you state, Mr. Young, as Deputy City and County Attorney, whether or not any charge of prostitution—I mean any charge of being a common prostitute or of vagrancy or of maintaining a house of prostitution has been lodged against Miss Penland since the 3rd day of August, 1937?

Mr. Young: Same objection, your Honor. This is a case of murder, not prostitution. It is not a matter within my knowledge.

The Court: Objection sustained.

Mr. Dwight: May I save an exception?

The Court: Exception noted. [532]

By Mr. Dwight:

Q. Then, I take it, Mr. Young, you refuse to disclose?

Mr. Young: Your Honor, the Court has ruled on this matter. Counsel has no right to argue with the witness.

(Testimony of Kenneth Young.)

Mr. Dwight: I am not arguing with the witness.

The Court: The Court has ruled the question is improper. Withdraw your question; it is not proper.

By Mr. Dwight:

Q. The Court has ruled those two questions are improper. Now, I am asking you whether you refuse to state whether the information was filed. I didn't say why.

Mr. Young: He (indicating the Clerk) is the proper man if you want to prove that.

The Court: Objection will be sustained.

Mr. Dwight: May I ask the remarks of counsel be stricken from the records and that the jury be ordered to disregard the remarks of the witness?

Mr. Young: I have no objection to that being stricken.

The Court: I take it, those remarks and any other remarks so made as her attorney will not be considered by the jury and these particular remarks will be stricken from the record.

Mr. Dwight: That is all.

Mr. Young: Thank you. [533]

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Mr. Dwight: Now, may it please the Court, by way of inquiry, will the Court instruct the jury in regard to judicial notice of this Court's official acts? I will withdraw that. (To the Clerk) Mr. Wilder, please bring all the criminal records in?

May we take our recess at this time? By that time, I will see Mr. Wilder and save a lot of questions.

The Court: The Court stands in recess.

(A brief recess was taken.)

Mr. Dwight: Mr. Young, you have no objection to Mr. Wilder remaining in Court while Mr. Paulos is on the witness stand? Call Mr. Paulos.

(There was no response, but acquiescence.)

### JACINTO PAULOS,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Dwight:

Q. Sit down, Mr. Paulos. Mr. Paulos, what is your name? A. Jacinto Paulos.

Q. Where do you work?

A. Any place I can find a job.

Q. Where do you work now?

A. Reservation, Army.

Q. And where do you live? A. Wahiawa.

Q. Do you know where Mrs. Warren lives?

A. Wahiawa. [534]

Q. You know where she lives? A. Yes.

Q. Where do you live with reference to that?

A. Yes, one lot between me and her.

Q. On the same side of the street; that is the brown house? A. Yes, sir.

(Testimony of Jacinto Paulos.)

Q. Mr. Paulos, have you ever seen any "No Trespassing" signs on the premises of Mrs. Warren? A. Yes, sir.

Q. Where did you see those signs?

A. About twelve or fourteen feet out from the government road on his own property.

Q. Inside the property? A. Yes.

Q. Is there any there now? There is one there now? A. Yes, all the time.

Q. Now, with reference to that one there now, you say it is inside the property line of Mrs. Warren? A. Yes.

Q. How long have you seen that sign there?

A. I see about four or five years that sign there.

Q. Could you see it rather easily? Anybody walking up and down, anybody could see that sign?

A. Suppose we come down we see it easy.

### Cross Examination

By Mr. Young:

Q. Mr. Paulos, when did you see that sign?

A. Last time yesterday.

Q. Did you notice the color of that board? Was it [535] clean or dirty?

A. Sometimes clean, sometimes dirty.

Q. How was it yesterday when you seen it yesterday?

A. Some places dirty, some places clean.

Q. The part has "No Trespassing", was it clean?

(Testimony of Jacinto Paulos.)

A. Some parts clean, some dirty.

Q. What is that *signed* attached to?

A. Nobody can go in.

Q. Mr. Paulos, is that sign nailed on to something? is it lying on the ground?

A. 1 x 4 board.

Q. Did you notice the condition of that 1 x 4? Is it clean?      A. Kind of dirty.

Q. Which was the dirtiest, the 1 x 4, or the sign?      A. 1 x 4 is more dirty.

Q. The sign was not so dirty?

A. Not so dirty.

Q. Has that same sign been there all the time or different sign?

A. Sign been there; somebody drop it down and change.

Q. When was it changed?

A. About two years ago.

Q. About two years ago. The present sign has been there for two years, the board with "No Trespassing" on it?      A. Yes.

Mr. Young: No further questions.

Mr. Dwight: That is all. Mr. Wilder, will you take the stand, please. [536]

HARRY A. WILDER,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dwight:

Q. Will you state your name?

A. Harry A. Wilder.

Q. Mr. Wilder, you are the official chief clerk of this division of the Circuit Court?

A. Yes.

Q. And this division of the Court has charge of criminal prosecutions in this Circuit?

A. It has at the present time and since January 10th of this year.

Q. And you have with you, have you not, the docket of criminal cases pending against residents of this jurisdiction?

A. I have the criminal docket here of cases filed since August 1 or August 3, 1937, up to the present time.

Q. Have you examined that docket to ascertain if a charge of murder in the second degree has been lodged against Lou Rodgers?

Mr. Young: I object to this as incompetent, irrelevant and not within the issues of this case. Your Honor, what difference does it make?

Mr. Dwight: I submit it is very material in this case in the determination of the question of whether or not Miss Rodgers was an accomplice and this is very vital in that respect. Of course,

(Testimony of Harry A. Wilder.)  
should it develop that Miss Rodgers was an accomplice, then this Court is bound now within the [537] evidence to instruct the jury in relation to the weight of testimony to be accorded an accomplice.

The Court: Objection sustained.

Mr. Dwight: Save an exception.

The Court: Exception saved.

By Mr. Dwight:

Q. Then, I will repeat the three questions, your Honor. Mr. Wilder, do the records disclose any charge of any nature from August 3, 1937, against either Miss Rodgers or John Kiehm?

Mr. Young: Object to the same again as not being within the issues of this case, as being irrelevant.

Mr. Dwight: I submit, if the Court please, it is the greatest issue in this case, the credibility of the witnesses.

The Court: Objection sustained.

Mr. Dwight: May I save an exception?

The Court: Exception saved.

Mr. Dwight: I offer to prove by this witness—

Mr. Young: I object to any offer of proof.

Mr. Dwight: I make two offers of proof so that we can save an exception. I offer to prove by this witness that the records of the Circuit Court of the First Circuit show that up to the present time no charge or indictment or information, charging Lou



(Testimony of Harry A. Wilder.)

Rodgers with the crime of murder in the second degree, conspiracy or attempt to commit murder, or any other crime in connection with the death of Wah Choon Lee on August 3, 1937, [538] at Wahiawa.

Mr. Young: Let the record show, your Honor, my objection to this question. It is not relevant; it is not material to the issues in this case; it is an attempt to prejudice this jury and for the reason that it is not competent evidence in this matter; it would have no bearing upon this case one way or the other.

The Court: The Court sustains the objection and rejects the offer of proof.

Mr. Dwight: I make an offer to prove by this witness that the records of this Court disclose that no criminal charge of any nature, either murder in the second degree or conspiracy, or any other crime, has been lodged against the witness John Kiehm. My both offers are for the purpose of giving the jury facts pertaining to the question of their credibility, first, upon the question of whether or not any immunity has been offered to the witnesses, this fact being relevant to that issue, and further upon the ground that the evidence does tend to show and throw light upon the issue of whether or not these two witnesses were accomplices.

Mr. Young: May my same objection go to this, with the additional reason that on the matter of

(Testimony of Harry A. Wilder.)

the credibility of witnesses, counsel's own offer of proof is that there was no indictment placed at the present time, and could not possibly affect their credibility at this time and it is improper at this time to offer for that reason? [539] The principal reason is it is irrelevant and it is an attempt to prejudice the jury.

The Court: The Court will reject the offer of proof.

Mr. Dwight: And I offer to prove by the witness O'Connor that he is the District Magistrate of Wahiawa and was the District Magistrate since August last year and as such District Magistrate has complete control and custody of all criminal charges filed in the District Court of Wahiawa, and that the records of his Court and from his personal knowledge show that no complaint or charge was lodged by the police against Miss Penland—

The Court: Against who?

Mr. Dwight: (Continuing) against Miss Penland for the crime of either that of being a common prostitute or that of maintaining a house of ill fame, or any other crime in connection with any incident that occurred on August 3rd and 4th of 1937—

Mr. Young: May the record show, your Honor—

Mr. Dwight: (Continuing) and I state that that is vital to this case to determine the question

(Testimony of Harry A. Wilder.)

of whether or not Mr. Burns actually made a legal arrest.

Mr. Young: May the record show, your Honor, the Territory objects to this offer of proof for the reason that the offer of proof is irrelevant and immaterial; it is not within the issues of [540] this case; it is an attempt to bring before this jury a matter which will prejudice the jury, to-wit, that since Billie Penland has not been charged, therefore this defendant is not at fault in the case at bar.

The Court: I would like to take this up in chambers. Court will take a short recess. The jury can remain.

(A brief recess was taken.)

The Court: As part of the record, the Court in reconsidering these offers of proof, will set aside those rulings on the offers and overrule the objection in each case.

By Mr. Dwight:

Q. Mr. Wilder, will you refer to the docket of the Circuit Court and tell me if any charge of murder, conspiracy to murder, assault and battery or any other crime has been filed in this Court against Lou Rodgers in connection with the murder of Wah Choon Lee?

A. (Referring to the docket) I have examined this criminal docket from August 3, 1937, to date and I do not find the name of Lou Rodgers in the

(Testimony of Harry A. Wilder.)  
docket as a party defendant in any action.

The Court In fairness to Mr. Young, the Territory's objection goes to this?

Mr. Young: Yes, and motion to strike.

By Mr. Dwight

Q. Mr. Wilder, have you examined the records of this Court from August 3rd up to the present time to determine whether or not a charge of murder or conspiracy to murder [541] or attempt to murder or any other criminal charge has been filed in this Court against John Kiehm in connection with the death of Wah Choon Lee?

Mr. Young: May the record show the same objection?

The Court: Yes, the record will show that.

A. How do you spell that name?

By Mr. Dwight:

Q. K-i-e-h-m, Kiehm.

A. (The witness examined the docket.) That name does not appear as party defendant in any case.

Q. Will you examine the docket to determine if any information or charge has been lodged in this Court against Doris Penland, Billie Penland—

A. Doris Billie Penland?

The Court: Florence.

By Mr. Dwight:

Q. (Continuing) Florence Billie Penland for being a common prostitute or for living in or about

(Testimony of Harry A. Wilder.)

a house of ill fame, in connection with an incident occurring on the 3rd or 4th of August, 1937?

A. (The witness examined the docket.) That name does not appear as a defendant in any case.

Mr. Dwight: Your witness.

Mr. Young: No questions.

Mr. Dwight: Judge O'Connor telephoned he is on his way here. He is outside, I think.

The Clerk (Mr. Wilder): Judge O'Connor is not here.

The Bailiff: He is not here yet. [542]

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(Testimony by Stipulation of  
EDWARD A. O'CONNOR,

subpoenaed as a witness on behalf of the defendant.)

Mr. Dwight: Will you stipulate as to Judge O'Connor? I would rather have him testify. May it please the Court, Judge O'Connor is under subpoena. I appreciate the fact that he is busy and he phoned me. (Mr. Dwight conferred with Mr. Young.) Counsel is willing to stipulate that if Judge O'Connor is called as a witness for the defendant, subject, however, to counsel's objection and exception, that he, Judge O'Connor, will testify that he is the District Magistrate of Wahiawa and as such is in charge of all of the records of the Court; that no criminal charge has been filed in his Court against Florence Billie Penland for be-

ing a common prostitute or for living in and about a house of ill fame or any other crime in connection with the incidents occurring on August 3rd and 4th, 1937, at the home of the defendant, Ilene Warren, on Muliwai Street in Wahiawa.

Mr. Young: We will stipulate if Judge O'Connor was called, he will so testify, but we will reserve our objection that if he were called, he would so testify.

The Court: Let that stipulation be entered in the record that if Judge O'Connor were called, he would so testify, subject to the objection of the Territory.

Mr. Dwight: At this time the defendant rests. The defendant rested. [543]

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Mr. Young: No rebuttal. The Territory rests. The Territory rested in rebuttal.

Mr. Dwight: We are ready to take up the instructions.

The Court: The matter of instructions will be settled. The jury will be excused until nine o'clock tomorrow morning.

Mr. Dwight: I think, your Honor, may the jury be specially cautioned?

The Court: The prosecution and the defense have both rested, gentlemen of the jury, and you

are especially cautioned by the Court at this time, pending the final determination of this case by you, not to discuss the evidence in this case with anyone, any outsider, and not to read any newspaper account and to diligently report any attempt of anyone to reach you, to talk to you or discuss the matter with you in any way, and all the other general instructions I have given you in the past apply now. The jury will be excused until tomorrow morning at nine o'clock. You are excused. Court will stand adjourned.

(A recess was taken until Wednesday, February 16, 1938, at nine o'clock a. m.) [544]

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Honolulu, T. H., February 16, 1938.

(The trial was resumed at 11:00 o'clock a. m.)

The Clerk: Criminal 14,332 Territory of Hawaii against Ilene Warren, alias "Speed" Warren.

Mr. Young: Ready for the Territory. Stipulate the defendant and the jury are present.

Mr. Dwight: Ready for the defendant and so stipulated.

The Court: So stipulated. Let the record so show. The Court and counsel for Territory and the defendant are still in the process of settling instructions. The Court will excuse the jury until nine o'clock tomorrow morning and the Court adjourns, as far as the jury is concerned, until that time and will proceed with the arguments at nine o'clock tomorrow morning. The Court will proceed to settle

the instructions in chambers. The Court stands adjourned until nine o'clock. The jury is under the same instructions as before.

(A recess was taken until Thursday, February 17, 1938, at nine o'clock a. m.) [545]

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Honolulu, T. H., February 17, 1938.

(The trial was resumed at 9:00 o'clock a. m.)

The Clerk: Criminal 14,332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren.

Mr. Dwight: Ready for the defendant.

Mr. Young: Ready for the Territory. Stipulate the defendant and the jury are present.

Mr. Dwight: So stipulated, your Honor.

The Court: Let the record so show.

#### CLOSING ADDRESSES TO THE JURY

(Mr. Young made a closing address to the jury on behalf of the plaintiff, in the course of which he said):

Gentlemen, I anticipate much will be said about the Territory's witnesses. They will be condemned because they have not led the right type of life. The defense will condemn and argue not to believe them, especially the two girls in this case. Look at the position the Territory is in this case. We have called before you every possible witness in this case, irrespective of their testimony. We have brought to you every person in that house. Why?



To lay before you gentlemen the truth in this case. We have tried to bring before you every bit of evidence legally admissible in this Court for the purpose of seeking the truth. To do that we have had to go, you might say, into the enemy camp. We have had to put upon the stand and ask you to believe witnesses, who, by their occupation, are naturally upon the other [546] side. Now, you are going to say, why did they testify? Why, if they are on the other side? Gentlemen, those witnesses were subpoenaed by order of this Court in case they wished to come, but by order of the Court, the same as you gentlemen, and for the further reason, irrespective of what they think on the question of prostitution, murder is another matter, and each one of those witnesses made a statement on their life. To think that they have withheld evidence in this case, to think they have——

Mr. Dwight: At this time I except to counsel's remarks, commenting upon witnesses that have taken the stand. It is highly improper and prejudicial. I ask the Court to instruct the jury to disregard those remarks.

The Court: Gentlemen of the jury, this is merely argument. It is not evidence. Do not regard any remarks in this argument as evidence. Proceed.

(Mr. Young continued closing address to the jury on behalf of the plaintiff.)

(Mr. Dwight made a closing address to the jury on behalf of the defendant.)

Mr. Dwight: Does the Court want to take a little breathing spell at this time?

The Court: Do you wish to finish before lunch?

Mr. Dwight: I will probably take another three-quarters of an hour. [547]

The Court: The Court will adjourn.

Mr. Dwight: I suggest the jury be taken to lunch.

The Court: Swear the bailiff, Mr. Moses Kaululaau.

(Mr. Kaululaau was sworn as bailiff.)

The Court: Shall we adjourn until one-thirty or two?

Mr. Dwight: One-thirty will be all right.

The Court: The Court will adjourn until one-thirty p. m. The jurors will be in the custody of Mr. Moses Kaululaau. Proceed to Merchants' Grill and return here at one-thirty p. m. Court stands adjourned until one-thirty p. m.

(A recess was taken until 1:30 o'clock p.m.)

#### Afternoon Session

Mr. Dwight: May I proceed? I am willing to stipulate the defendant and jury are present.

Mr. Young: We will so stipulate.

The Court: The record will so show. Proceed.

(Mr. Dwight continued and concluded closing address to the jury on behalf of the defendant at 2:11 o'clock p. m.)

(Mr. Young continued and concluded closing address to the jury on behalf of the plaintiff, in the course of which he said):

I could not throw it out of my mind, if I were a juror.

Mr. Dwight: I except to the remark of counsel. [548] He had no right to make it. I cite it as error and misconduct on the part of the Public Prosecutor. I ask the Court instruct the jury to disregard it.

The Court: The jury will be instructed to disregard the opinion of counsel as to the guilt or innocence of this defendant and not to consider it at all.

### THE CHARGE TO THE JURY

(The Court, at 3:50 o'clock p. m., charged the jury as follows): (Reading)

Gentlemen of the Jury, I instruct you that the defendant in this case stands charged in the indictment with the crime of murder in the second degree.

You are the exclusive judges of the facts in this case and the credibility of the witnesses but the law you must take from the court as given you in these instructions to be the law notwithstanding any opinion you might have as to what the law is or should be.

Gentlemen of the Jury, you are instructed that the defendant in this case is charged with the crime of murder in the second degree, the issues that you must decide are as follows:

In the first count of the indictment it is charged that the defendant on August 3, 1938

- (1) with force and arms
- (2) unlawfully, feloniously, wilfully and of her malice aforethought
- (3) and without authority and without justification and without extenuation by law
- (4) did kill and murder Wah Choon Lee, a human being.

Before you can convict the defendant upon this count, [549] you must find and be satisfied from the evidence that each and every element set forth above has been proven to your satisfaction and beyond all reasonable doubt.

If the prosecution has failed to prove any one of the foregoing elements to your satisfaction and beyond all reasonable doubt, I instruct you to acquit the defendant on this count.

If the evidence is evenly balanced as to any one of the foregoing elements I also instruct you to acquit the defendant.

In the second count of the indictment it is charged that the defendant on August 3, 1938

- (1) with force and arms
- (2) unlawfully, feloniously, wilfully and of her malice aforethought
- (3) and without authority and without justification and without extenuation by law
- (4) while the hands and body of Wah Choon Lee
- (5) were in contact with a certain metal plate

(6) did then and there cause the said metal plate to be charged with a deadly charge of electric current,

(7) and did electrocute and give certain mortal injuries to Wah Choon Lee

(8) from which electrocution and mortal injuries Wah Choon Lee died.

Before you can convict the defendant upon this count, you must find and be satisfied from the evidence that each and every element set forth above has been proven to your satisfaction and beyond all reasonable doubt.

If the prosecution has failed to prove any one of the foregoing elements to your satisfaction and beyond all reasonable doubt, I instruct you to acquit the defendant. [550]

If the evidence is evenly balanced as to any one of the foregoing elements, I also instruct you to acquit the defendant.

In the third count of the indictment it is charged that the defendant on August 3, 1937

(1) with force and arms

(2) unlawfully, feloniously, wilfully and of her malice aforethought

(3) and without authority and without justification and without extenuation by law

(4) did cause a certain metal plate to be charged with a deadly charge of electric current

(5) well knowing at the time that Wah Choon Lee was about to bring and would bring

his hands and body into contact with said metal plate,

(6) and thereafter while said plate was charged with electricity, Wah Choon Lee did bring his body and hands into contact with said metal plate

(7) by reason thereof Wah Choon Lee was electrocuted

(8) and did receive certain mortal injuries

(9) from which electrocution and mortal injuries Wah Choon Lee died.

Before you can convict the defendant upon this count, you must find and be satisfied from the evidence that each and every element set forth above has been proven to your satisfaction and beyond all reasonable doubt.

If the prosecution has failed to prove any one of the foregoing elements to your satisfaction and beyond all reasonable doubt, I instruct you to acquit the defendant.

If the evidence is evenly balanced as to any one of the foregoing elements, I also instruct you to acquit the defendant.

The indictment in this case is in no sense evidence [551] or proof that the defendant has committed the alleged crime, but is merely a formal allegation, required by law, alleging that the crime was committed in the form and manner therein set forth, and no juror should suffer himself to be influenced in any degree by the fact that this indictment has been returned against the defendant.

I further instruct you that the offense with which this defendant stands charged is defined in our statutes as follows:

“Murder is the killing of any human being with malice aforethought, without authority, justification or extenuation by law, and is of two degrees, the first and second, which shall be found by the jury.”

“Murder committed with deliberate premeditated malice aforethought, or in the commission of or attempt to commit any crime punishable with death, or committed with extreme atrocity or cruelty, is murder in the first degree.

Murder not appearing to be in the first degree is murder in the second degree.”

And in this connection the Court instructs you that malice aforethought is a necessary element to the crime of murder in the second degree but that it is not necessary for the Territory to prove that such malice aforethought was deliberate and premeditated; nor is it necessary for the Territory to prove that the killing was committed with extreme atrocity or cruelty.

“Manslaughter” is defined in our statutes as follows:

“Whoever kills a human being without malice aforethought, and without authority, justification or extenuation by law, is guilty of the offense of manslaughter.” [552]

And in this connection I instruct you that in order to prove the crime of manslaughter it is not necessary for the prosecution to show any intent on the part of the defendant to kill or injure the deceased, nor is it necessary for the prosecution to show that the defendant had any feelings of malice, hatred or illwill against the deceased.

You are further instructed that under our law the difference between murder in the second degree and manslaughter is that murder in the second degree has in it the element of malice aforethought while manslaughter has not such element of malice aforethought.

You are instructed that our law provides that under an indictment for murder in the second degree a jury may return a verdict of manslaughter, as the facts proved may warrant.

I further instruct you that "Malice" is defined in our statutes as follows:

"Malice in respect to the commission of any offense, except in cases where it is otherwise expressly provided or plainly intended, includes not only hatred, illwill and desire of revenge; but cruelty of disposition or temper; and also a motive or desire of gain or advantage to the offender or another; or of doing a wrong or injury to any person or persons, or to the public: It also includes the acting with a heedless, reckless disregard or gross negligence of the life or lives, the health or personal safety,



or legal rights or privileges of another or others, many or few, known or unknown; also the wilful violation of a legal duty or obligation, and wilful contravention of law.”

I further instruct you that under the laws of the Territory of Hawaii under a charge of Murder in the Second Degree when the act of killing another is proved, [553] malice aforethought shall be presumed, and the burden shall rest upon the party who committed the killing to show that malice aforethought did not exist, or a legal justification or extenuation for malice aforethought.

You are instructed that malice aforethought means malice and nothing more. There is no legal distinction between malice and malice aforethought.

You are further instructed that it is not necessary for the prosecution to prove, in order to warrant a conviction for the crime charged, that the defendant at the time of the alleged crime had any direct malice towards the deceased, Wah Choon Lee, in person, but it is enough if the prosecution prove to you beyond a reasonable doubt that malice existed against anyone similarly situated with the deceased.

I further instruct you that our statutes provide that every one shall be presumed to intend the natural and plainly probable consequences of his acts.

You are instructed that experts are allowed to give their opinion in answer to hypothetical ques-

tions. Before you can accept the answer of an expert you must be satisfied that the questions contain facts proved in this case beyond all reasonable doubt. If the facts upon which the hypothetical questions are not true, then you must disregard the opinion of such experts.

Gentlemen of the Jury, testimony has been given by certain witnesses who in law are termed experts and in this connection I would suggest to you that while in proceedings such as the one being tried the law receives the evidence of experts in certain lines as to their opinion derived from [554] their knowledge of particular matters. The ultimate weight which is to be given to the expert testimony of witnesses is a question to be determined by the jury and there is no rule or law which requires you to surrender your own judgment to that of any person testifying as an expert witness; in other words, the testimony of an expert like that of any other witness is to be received by you and given such weight as you think it is properly entitled to but you are not bound or concluded by the testimony of any witness expert or other.

You are instructed that an accomplice is any person who aids or abets or conspires with another to commit a crime. Accomplices may be principals or accessories. Persons who take part in the commission of any offense or being present aid, incite, countenance or encourage others in the commission thereof shall be deemed principals. Any persons who not himself being present at the commission of

an offense, abets another in the commission thereof or procures, *councils*, incites, commands or hires others to commit the same with such other there-upon, in pursuance thereof, commits, is an accessory before the fact to the commission of such offense.

You are instructed that the testimony of accomplices are of an untrustworthy nature and you are cautioned that it is unsafe to base a verdict of conviction solely thereon, and before you can accept such testimony you must first find other corroborating evidence of some point essential to the issue testified to by said accomplices.

You are instructed that prostitutes are a class whose moral perceptions are inevitably a good deal dulled [555] by the character of the life they have led and their associations and their testimony is to be viewed in the light of their moral astigmatism as shown by their mode of life and you must carefully scrutinize the same and you must be satisfied that it is corroborated by other credible evidence upon some point essential to the issue testified to by said prostitute before you can give credence to the same.

The court further instructs you, gentlemen of the jury, that you are the exclusive judges of the credibility of the witnesses, of the weight of the evidence, and of the facts in this case. It is your exclusive right to determine from the appearance of the witnesses on the stand, their manner of testi-

fying, their apparent candor or frankness, or lack thereof, which witness or witnesses are more worthy of credit, and to give weight accordingly. In determining the weight to be given the testimony of the witnesses you are authorized to consider their relationship to the parties, if any, their interest, if any, in the result of this case, their temper, feeling or bias, if any has been shown, their demeanor on the witness stand, their means and opportunity of information, and the probability or improbability of the story told by them.

If you find and believe from the evidence that any witness in this case has knowingly and wilfully sworn falsely to any material fact in this trial or that any witness has knowingly and wilfully exaggerated or suppressed any material fact or circumstance in this trial for the purpose of deceiving, misleading or imposing upon you, then you have a right to reject the entire testimony [556] of such witness except insofar as the same is corroborated by other credible evidence or believed by you to be true.

You are instructed that Section 5404 of the Revised Laws of Hawaii 1935 provides as follows:

“Policemen, or other officers of justice, in any seaport or town, even in cases where it is not certain that an offense has been committed, may, without warrant, arrest and detain for examination such persons as may be found under such circumstances as justify a reason-

able suspicion that they have committed or intend to commit an offense.”

You are hereby instructed that the term “reasonable suspicion” as used in said statute is construed by the Court to mean probable cause.

You should consider this law together with all the evidence in the case in determining whether or not the deceased, Wah Choon Lee, was lawfully upon the premises of the defendant at the time in question.

You are instructed that a police officer in order to make a valid arrest must at, or before, the time of making an arrest declare that he is an officer of justice, if such be the case. If he have a warrant he should show it if required, or if he make the arrest without a warrant, in any of the cases in which it is authorized by law, he should give the party arrested clearly to understand for what cause he undertakes to make the arrest.

You are instructed that any arrest without a warrant is *prima facie* illegal.

You are instructed that whenever it is necessary to enter a house to arrest an offender, and entrance is refused, the officer or person making the arrest may force [557] an entrance by breaking doors. But before breaking any door, he shall first demand entrance in a loud voice, and state that he is the bearer of a warrant of arrest, or if it is a case in which arrest is lawful without a warrant he must

substantially state that information in an audible voice.

You are instructed that mere suspicion is not enough to constitute probable cause for an arrest in the case of either a felony or a misdemeanor.

You are instructed that the probable cause to believe that a crime has been committed must be based on facts and any information not based on personal observation and perceptions of the officer is not a fact but purely hearsay.

You are instructed that a mere preparation of the means of committing any offense, nothing being done in execution of the intent to commit the same, is not an attempt to commit the same, as for example merely procuring poison intended to be used for murder.

You are instructed that prostitution is not a crime in the Territory of Hawaii and you are further instructed that a common prostitute is a vagrant, that vagrancy is a status and that one act of sexual intercourse for money does not of itself make such a person a common prostitute.

You are instructed that the crime of being a vagrant because the defendant in such a case is a common prostitute and the crime of maintaining a common nuisance by reason of maintaining a house of prostitution are misdemeanors.

You are instructed that under our law it is unlawful for any person to keep a house for the purpose of [558] public prostitution.

Any part of the building appropriated to the purpose of prostitution is a house within the meaning of this law.

Section 6310 of the Revised Laws of Hawaii 1935 makes it unlawful to be a common prostitute.

And in this connection the court instructs you that you may consider these laws, together with all the evidence in the case, in determining whether or not the deceased, Wah Choon Lee, and the other police officers with him, in entering upon the premises of the defendant, acted under such circumstances as would justify a reasonable suspicion based upon probable cause that someone upon the premises of the defendant had committed or intended to commit an offense against the laws of the Territory of Hawaii.

If you find from the evidence that the deceased entered upon the premises of the defendant without a warrant of arrest or a search warrant and without the consent of the defendant and without authority of law, you are instructed that he was a trespasser.

You are instructed that one making an illegal arrest or making an arrest in an illegal manner is a trespasser.

You are instructed that if you believe from all the evidence and beyond a reasonable doubt that the deceased was acting as a police officer and that he went upon the premises of the defendant for the purpose of assisting another police officer, and that

the deceased in so doing acted under such circumstances as would justify [559] a reasonable suspicion based upon probable cause that some person or persons upon the premises had committed or intended to commit an offense against the laws of the Territory of Hawaii, then you must find under such circumstances that the deceased, Wah Choon Lee, had a lawful right there and it was his duty to enter upon the premises of the defendant and you must not under such circumstances consider the deceased as a trespasser.

You are instructed that if you find from the evidence that Wah Choon Lee was a trespasser or at the time that he came in contact with the door of the defendant's home, illegally attempting to enter the premises of the defendant and you further find that the defendant did install the electrical equipment and did turn the switch which caused an electric force to flow through the metal plate on the door, and you further find that the force used was reasonable or apparently reasonable, to a reasonably prudent man, in defense of her home, then you must acquit the defendant.

You are instructed that a person owes no duty to a trespasser except to refrain from wilful, wanton or reckless conduct likely to injure him.

You are instructed that a person in his own dwelling house may use such means as are necessary even to the taking of life, to prevent a forcible and unlawful entry into his home.



To justify a homicide as in defense of habitation the accused must use no greater force than is necessary or apparently necessary to a reasonably prudent man. The force used by him must be neither greater in degree [560] nor early or later in point of time than is necessary or apparently necessary.

You are instructed that if you believe from all the evidence and beyond a reasonable doubt that the deceased was acting as a police officer and that he went upon the premises of the defendant for the purpose of arresting and detaining for examination such persons as he might have found thereon, and that the deceased in so doing acted under such circumstances as would justify a reasonable suspicion based upon probable cause that some person or persons upon the premises had committed or intended to commit an offense against the laws of the Territory of Hawaii, then you must find under such circumstances that the deceased, Wah Choon Lee, had a lawful right there and it was his duty to enter upon the premises of the defendant and you must not under such circumstances consider the deceased as a trespasser.

And in this connection you are further instructed that the fact as to whether or not there was a "no trespassing" sign upon the premises at the time, would not alter the right of the deceased, Wah Choon Lee, or the other police officers with him, to be upon the premises in question.

A criminal prosecution begins with the presumption that the defendant, although accused, is inno-

cent, and that to overcome this legal presumption the evidence must be clear and convincing and sufficiently strong to convince the jury beyond a reasonable doubt that the defendant is guilty. The presumption of innocence is evidence created by the law in favor of one accused, whereby his [561] innocence is established until sufficient evidence is introduced to overcome the proof which the law has created. The benefit of this presumption attends the accused at every stage of the proceedings and stands as her sufficient protection unless and until it has been removed by evidence proving her guilt beyond a reasonable doubt.

If you can reconcile the evidence with any reasonable hypothesis consistent with the defendant's innocence, it is your duty to do so and in that case to find her not guilty, for every reasonable doubt is to be resolved in favor of a defendant, and it is not sufficient that the circumstances coincide with, account for and therefore render probable the guilt of the defendant. It must exclude to a moral certainty every other reasonable hypothesis.

Under the law no jury should convict a person charged with crime upon mere suspicion, however strong, or simply because there is a preponderance of all of the evidence in the case against him, or simply because there are strong reasons to suspect him guilty. What the law requires before the defendant can be convicted of crime is not suspicion, not mere probabilities, but proof which excludes all reasonable doubt of her innocence.

You are further instructed that while the prosecution is required to prove the defendant guilty of the crime of murder in the second degree beyond a reasonable doubt, it is not necessary that such proof should be made by direct proof, but may be shown by facts and circumstances in the evidence.

I further instruct you that evidence is of two kinds, [562] direct and circumstantial. Direct evidence is where a witness testifies of his own personal knowledge of the main fact, or facts, to be proven. Circumstantial evidence is proof of certain facts and circumstances in a certain case, from which the jury may infer other and connected facts, which usually and reasonably follow according to the common experience of mankind. A crime may be proven by circumstantial evidence, as defined in these instructions, as well as by direct testimony of eye-witnesses. There is nothing in the nature of circumstantial evidence that renders it less reliable than direct evidence if it is of such a character as to exclude every reasonable hypothesis, other than that of the defendant's guilt.

I further instruct you that the burden of proof is upon the Territory and the law, independent of the evidence, presumes the defendant to be innocent, and this presumption continues and attends him at every stage of the case until it has been overcome by evidence which proves him guilty to your satisfaction and beyond a reasonable doubt. And in this connection, I instruct you that the doubt which will

entitle the defendant to an acquittal must be a reasonable doubt, not a conjured-up doubt, such a doubt as you might conjure up to acquit a friend, but a doubt that you could give a reason for.

A reasonable doubt is not a possible doubt, not a conjectural doubt, not an imaginary doubt, not a doubt of the absolute certainty of the guilt of the accused, because everything relating to human affairs and depending upon moral evidence is open to conjectural or imaginary [563] doubt, and because absolute certainty is not required by law. The real question is whether after hearing the evidence and from the evidence you have or have not an abiding belief, amounting to a moral certainty that the defendant is guilty and if you have such belief so formed, it is your duty to convict, and if you have not such belief so formed, it is your duty to acquit. You should take all the testimony and all the circumstances into account and act as you have or have not such abiding belief the fact is.

You are instructed that under the law a defendant is not compelled to testify in her own behalf and the fact that a defendant has not testified in her own behalf is not be considered by you in determining the question of her guilt or innocence.

Gentlemen of the Jury, in placing hereby before you the instructions given, you are further instructed to disregard the notations in ink at the bottom of the instructions.

I further instruct you that you may bring in, under the charge against the defendant in this case,

either of the following verdicts as the facts and circumstances in evidence under the law as given you in these instructions may warrant:

1. Guilty as charged, or
2. Guilty of manslaughter, or
3. Not guilty.

Mr. Dwight: May it please the Court, at this time may I except to the granting by the Court of all of the Prosecution's Requested Instructions upon my general objection?

The Court: You may.

Mr. Dwight: To the granting of Prosecution's Requested Instructions Nos. 3, 4, 5, 12, 12A, 13, 14 and 17 over objection, and the refusal of the Court to give [564] Defendant's Requested Instructions Numbered 1, 2, 3, 4, 8, 10, 13, 16, 18, 28, 30, 31, 32 and 37.

The Court: Exception will be noted. The objections are already in the record. Have you any?

Mr. Young: No, your Honor.

The Court: Mr. Moses W. Kaululaau, I will give you these verdicts, the three forms as read in my last instruction. Hand them to the jury. You, gentlemen of the jury, will retire to the jury-room. The bailiff will escort you. You will have with you the exhibits in evidence in this case and if you desire any contact with the Court or desire any phase of the testimony or part of the testimony to be re-read to you at any time or you desire the instructions or any one of them to be read, you may so

notify the bailiff, who will notify the Court. You will appoint a foreman and proceed with your deliberations forthwith. The jury will now retire. The Court in the meantime will recess, awaiting the deliberation of the jury.

(The jury retired to the jury room to deliberate upon its verdict, the Court took a recess, and the jury afterward returned into Court at 6:32 o'clock p. m., and the following proceedings were had):

The Court: Have you gentlemen reached a verdict?

The Foreman (Juror O'Sullivan): No, your Honor.

The Court: The Court instructs the bailiff to take the jury to dinner in his custody at the Young Hotel. Return here and go immediately to the jury [565] room to further deliberate on this case within an hour and a half from six-thirty.

Mr. Dwight: May I suggest that the instructions include the fact that the jury do not deliberate during the dinner hour. They can use their time to relax and not deliberate. Come back and deliberate.

The Court: The Court advises you that you should not deliberate or argue about the case. Just relax, enjoy a good meal, come back and then deliberate in the jury-room. You will be excused now in the custody of the bailiff and return any time

you desire within an hour and a half from six-thirty. So ordered.

(At 6:35 o'clock p. m. a recess was taken, awaiting the verdict of the jury.)

(At 9:15 o'clock p. m. the jury returned to the court-room and jury box and the following proceedings were had):

The Court: I understand, gentlemen of the jury, you wish to make a request of the Court.

The Foreman: Yes, your Honor, we would like to hear the testimony of Officer Burns, direct and redirect, and the testimony of Captain Caminos.

The Court: Is that all?

The Foreman: And Sergeant Erpelding.

The Court: Have you any objection?

Mr. Dwight: No, your Honor. I think the jury is entitled to it.

The Court: The request will be granted. [566]

Mr. Clark, Reporter, read the entire testimony, first of Officer Burns, direct and redirect, and then read the direct and redirect of Caminos and Sergeant Erpelding. Officer Burns first.

(The reporter read the direct examination of Edward J. Burns, as set forth on pages 200 to 234, both inclusive, of this transcript.)

[Printer's Note: Pages 238 to 274 of this printed record.]

The Court: I would suggest we give Mr. Clark a rest. He has been reading for about two hours. In about ten or fifteen minutes come back and we will finish reading the testimony.

(A brief recess was taken.)

The Foreman: On the balance of the testimony of Burns, we will pass it and then go on to Captain Caminos, just from the time they left Honolulu, if there was instructions given to Burns and whatever instructions were given to Burns at Wahiawa as to the entrance of the home.

The Court: Then, Mr. Clark, turn to Captain Caminos' testimony. Just read that testimony which deals with instructions by Captain Caminos to Burns at Honolulu and Wahiawa and the evidence concerning the entry on reaching their destination at Muliwai Street. Use your judgment in finding that.

(The reporter read from the testimony of witness Clarence C. Caminos, as follows):

“Direct Examination

By Mr. Young:

Q. What time did you get out there?

A. At Ilene Warren's place you mean?

Q. Yes. [567]

A. About five to nine.

Q. Where had you been just prior to that?

A. I was at the Wahiawa Police Station.

Q. Who was with you, if anyone?

A. Captain Kalauli, Officer Francis Apoliona, Officer Yuen, Officer Chun and the deceased, Wah Choon Lee. \* \* \*

Q. Now, where were the other officers? What did they do, if you saw them, when the whistle blew?



A. My instructions was this——

Mr. Dwight: Never mind what your instructions were. Objected to as incompetent, irrelevant and immaterial and hearsay.

The Court: Objection sustained.

\* \* \* \* \*

Cross Examination

By Mr. Dwight:

Q. Caminos, how did you happen to go out to Wahiawa with this large group of police officers?

A. I received complaints from the citizens out there.

Q. That is why you went out there?

A. Yes, sir.

Q. You recall testifying here on January 24th? A. Beg pardon?

Q. You recall testifying here on January 24th of this year? A. Yes, sir.

Q. Do you recall in answer to that question you stated that you were ordered out to make raid on "Speed" Warren?

A. I don't recall that.

Q. You don't recall. If the reporter refreshes your [568] memory——?

A. It might be.

Q. We will take it up in the recess. You deny that you told me that you were ordered out to Wahiawa to raid "Speed" Warren?

A. I wouldn't deny that.

Q. You wouldn't deny that?

A. I don't recall saying that.

Q. Well, what were you going out to Wahiawa for?

A. I was going out to Wahiawa to make a raid on the home of Ilene Warren.

Q. Exactly, and you were ordered out to make that raid?      A. Yes, sir.

Q. By whom?

A. By the Chief of Police, William A. Gabrielson.

Q. And you knew at that time that "Speed" Warren had never been convicted of any offense?

A. I knew she was convicted of one.

Mr. Young: It is calling for the conclusion of this witness, your Honor.

The Court: It has already been asked and answered.

Mr. Young: I object anyway. I ask the answer be stricken and the jury instructed to disregard it.

Mr. Dwight: I have no objection to it being stricken, if counsel objects.

The Court: It will be stricken on the suggestion of both counsel and the jury asked to disregard the question and answer.

By Mr. Dwight:

Q. You went to Wahiawa? [569]

A. Yes, sir.

Q. Without any search warrant?

A. Yes, sir.

Q. You never had the people sign any affidavits to support a search warrant?

A. No, sir.

Q. And you went out there without a warrant of arrest?           A. Yes, sir.

Q. Wasn't that matter discussed in the Police Station?

A. About the search warrant?

Q. Yes.           A. No, sir.

Q. Weren't you told you had no right to go there without a search warrant or warrant of arrest?           A. No, sir.

Q. It wasn't discussed in the conference?

A. No, sir.

Q. Do you know Judge O'Connor?

A. Yes, sir.

Q. You ever discuss this case with him?

A. No, sir.

Q. You say you saw Burns walk up the street and go to the door?           A. Yes, sir.

Q. What did he do when he got to the door?

A. He stood at the door. If he did knock or press the bell, that I couldn't say.

Q. You saw him go to that door?

A. Yes, sir.

Q. You had your eye on him all the time?

[570]

A. Yes, sir.

Q. You saw him go. You don't know whether he pressed the bell or not?

A. Well, I couldn't say.

Q. Then he went in? A. Yes, sir.

Q. You watched him all the time?

A. Yes, sir.

Q. Mr. Burns did not walk in and walk back around the house?

A. Mr. Burns did not walk around the house. He walked up to the door, he walked back to the sidewalk, then walked back.

Q. Did you talk your testimony over with Mr. Burns?

A. No, sir, I did not.

Q. Was Mr. Burns' testimony of January 24th discussed with you in any way, Mr. Caminos? A. No, sir.

Q. You are sure of that?

A. I am sure of that.

Q. Now, after you heard this whistle—Was it one whistle that you were to hear or what?

A. Well, my instructions was this,—when an arrest was made to blow his whistle. I heard the whistle once.

Q. You sent Mr. Burns in there to try and make a case of prostitution or fornication, to try to make one of the women?

A. Yes, sir.

Q. To try to make one of the women and if he made the woman, to blow his whistle?

[571]

A. Yes, sir.

Q. That is exactly what you told him?

A. Yes, sir.

Q. When he blew the whistle you thought Burns had had intercourse with the woman?

A. No.

Q. Answer that question yes or no.

A. No.

Q. What did you think when the whistle blew?

A. When the whistle blew, I had in mind an arrest had been made; for what offense, I couldn't say.

Q. You remember telling me on January 24th that you went in there because you thought the act of prostitution had been committed?

A. No, sir.

Q. Now, isn't that a fact, you thought he had committed intercourse with some girl and had given the girl marked money, had fixed it?

A. No, sir.

Q. Did you give him instructions to have intercourse with one of the women?

A. I didn't instruct him to have intercourse with the woman in that home.

Q. You just told him to go in and give her three marked dollars?      A. Yes, sir.

Q. That is all you told him to do?

A. Yes, sir.

Q. When he blew the whistle you knew that Burns had gone in and given this woman three marked dollars? [572]

A. At that time I did not think that Burns had gone in. I thought that Burns had given someone else the money to go in and when this person had gone in an arrest had been made.

Q. Now, you marched up with all the police officers?

A. Yes, sir.

Q. You sent Burns ahead to go in?

A. Yes, sir.

Q. You told Burns, according to your testimony, that Burns was to go in and give this woman three dollars; when he gave her three marked dollars and had intercourse with her to blow the whistle?

A. My instructions was when Burns got in to see that she got the money, but Burns was instructed not to have intercourse with any of the women in the place.

Q. He was instructed not to have intercourse with anybody?

A. Yes.

Q. Now, I get it: First, Burns was instructed to go in there and not have intercourse with anyone?

A. Yes, sir.

Q. Then when he got in to see that somebody got three marked dollars?

A. Yes, sir.

Q. After somebody got three marked dollars, blow the whistle, that was his instructions?

A. His instructions was this, when he made an arrest in the place for him to blow his whistle

if he wanted assistance. That is the way he was instructed.

Q. Oh, I see. In other words, he wasn't even ordered [573] to make an arrest?

A. He was ordered to make an arrest. I instructed him that when he made the arrest in the place and if he wanted assistance, to blow his whistle.

Q. Let us go back. Let us get your instructions.

Mr. Young: Why, the witness can't answer his questions completely.

By Mr. Dwight:

Q. Have you anything more in answer to that question?

A. No, I have nothing further.

Q. You have answered the question?

A. Yes.

Q. So when Burns went in there he understood your instructions?      A. Yes, sir.

Q. Did he say so?      A. Yes, sir.

Q. In other words, he wasn't to have intercourse with anyone?      A. Yes, sir.

Q. But he was to give somebody three marked dollars?      A. Yes, sir.

Q. Then he was to arrest somebody and then blow the whistle?      A. Yes, sir.

Q. And then when the whistle blew, it was to be blown only if he needed assistance?

A. No, sir, if an arrest was made.

Q. If an arrest was made. In other words, when he made the arrest he blew the whistle?

[574]

A. When he made the arrest, he blew the whistle.

Q. It wasn't so much for assistance?

A. I would say for assistance.

Q. You remember testifying just two weeks ago, Mr. Caminos, about that?

Mr. Young: I object to counsel arguing with this witness that he switched his testimony.

Mr. Dwight: I withdraw that.

Q. Do you recall, Mr. Caminos, testifying that you instructed Burns to go in and make a case of prostitution?      A. I did not.

Q. And when he made a case to blow the whistle?

A. I did not tell him to go in there and make a case. I told him that in case he got into the home and if he felt that an arrest should be made for some kind of violation to place the people under arrest and to notify us, the other officers, by a blast of his police whistle.

Q. Did you tell him to take off his clothes?

A. I did not.

Q. Did you tell him to remain naked until you could get in?      A. I did not.

Q. Did he make any statement to you when he came to the front door and was naked?

A. When he came to the door leading into the sitting room I noticed that he had his un-



dershirt on. I asked him where were the women that he had placed under arrest. He told me that they had got away from him and they tried to beat him up.

Q. Now, when you say the door opened "Speed" Warren was standing there? [575]

A. Yes, sir.

Q. You recall my asking you that question, who opened the door? That was only two weeks ago.

A. Yes, I remember you asking me that question.

Q. What was your answer?

A. I couldn't say who opened the door.

Q. Are you sure?           A. I am sure.

Q. Did you say "Speed" Warren opened the door?           A. I did not.

Q. You deny making that statement?

A. I deny making that statement.

Q. You never talked to Young about this phase of your testimony since January 24th?

A. The Prosecutor?

Q. Yes.           A. I did.

Q. Mr. Young called your attention to the fact, did he not, that Mr. Burns had testified he opened the door?

A. I don't recall that.

Q. You don't recall that. Did he call your attention to the fact that you had testified Mrs. Warren opened the door?

A. Mr. Young didn't tell me that.

Q. He didn't tell you that?

A. No."

\* \* \* \* \*

The Court: Is that sufficient of his evidence?

The Foreman (Juror O'Sullivan): Yes. We want the portion of the testimony of Sergeant Erpelding when he was in the room. [576]

(The reporter read from the testimony of witness Charles W. Erpelding, as follows):

“Direct Examination

By Mr. Young:

Q. You went in the house then?

A. That is right.

Q. Where did you go in the house?

A. I went in the back room downstairs.

Q. Now, while you were sitting in the parlor did you hear anything unusual after you came back from the room?

A. Yes, I heard a whistle blow and somebody started banging on the outside and said, “Open up, police.”

Q. You heard all that inside?

A. That is right.

Q. Now, was there any other man in there at that time when you heard the whistle?

A. Yes. I didn't know; after the whistle blew, there was another man.

Q. Did you see a man in the parlor after the whistle blew?      A. Yes, a soldier.

Q. Was he in uniform?

A. He was in uniform.

Q. Where was this girl that you first saw?

A. I don't know.

Q. You don't know?           A. No.

Q. After the whistle blew what happened, if anything?

A. Why, I heard the banging on the outside. Some girl and man come running out of a room there.

Q. And you saw a man and a girl come out of a room?           A. That is right.

Q. What room did they come out of? [577]

A. A room on my left, which one I don't know.

Q. And which way did they go?

A. They went towards the front entrance.

Q. They went towards the front entrance of the house?           A. That is right.

Q. And were they together or were they apart?

A. One of them was ahead of the other, two or three feet apart.

Q. Two or three feet apart. Who was ahead, the girl or the man?           A. The girl.

Q. And the man was behind her?

A. Yes.

Q. Did you see where they went?

A. They went in the front entrance and after that I couldn't see.

Q. You didn't see anything after they went into the front entrance? A. No.

Q. What did you do after that?

A. I sat right there.

Q. How were these two people dressed?

A. They wasn't dressed.

Q. They weren't? You say you sat right there? A. That is right.

Q. How about the soldier in uniform?

A. He sat right there, too.

Q. He sat right there, too. How long did you sit there?

A. Until the cops came and took us away.

[578]

Q. Was the other man, the soldier in uniform, there when the cops came?

A. Yes; I started to go towards the front door on the inside of the sitting room. He stopped me and said, "I am a police officer." He stopped me. I went back and sat down.

Q. From the time that the whistle blew and when the police came, had you moved at all?

A. No.

Q. Had the other soldier got up, too?

A. Not to my knowledge, he did not.

Q. Do you know that other soldier?

A. No."

\* \* \* \* \*

The Court: Anything further?

The Foreman (Juror O'Sullivan): That is all.

The Court: You gentlemen retire and deliberate further upon your verdict.

(The jury again retired, and afterward returned into the court-room and jury box, whereupon the following proceedings were had, at 12:20 o'clock a. m.):

The Court: Gentlemen of the jury, have you reached a verdict?

The Foreman (Juror O'Sullivan): No, your Honor.

The Court: Do you believe that there is any possibility that you could reach a verdict in the next hour?

The Foreman: I don't think so.

The Court: Well, if you have a nice rest, do you believe that it would be possible? [579]

The Foreman: We might.

The Court: The Court believes if you do have a nice rest, sleep on it, your minds will be clear, you will be rested, there would be that possibility. The Court agrees with you. You will retire with the bailiff to the Young Hotel tonight. Report back for deliberations tomorrow morning at nine o'clock. Take breakfast at the hotel. Bring them back after breakfast.

Mr. Dwight: May I suggest the jury be instructed not to deliberate at all between now and when they return to the court-room?

The Court: That is a good suggestion. You are instructed not to deliberate any more tonight or in the morning at the hotel until you come back here tomorrow morning in the jury room, just to give your mind a complete rest. Retire to the Young Hotel, have breakfast and return tomorrow morning. That is all. The Court will adjourn.

(The jury retired at 12:25 o'clock a. m. in the custody of Bailiff Moses W. Kaululaau to the Young Hotel; a recess was taken until Friday, February 18, 1938, to await the verdict of the jury.) [580]

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Honolulu, T. H., February 18, 1938.

(The trial was resumed and the jury returned to the jury room in the custody of the bailiff for further deliberation upon their verdict.

At 10:45 o'clock a. m., the bailiff reported to the Court the jury had a request to make. Both counsel being present in chambers and the clerk of court, the following proceedings were had):

The Court: This is a request from the jury in the Warren case through the bailiff that they be permitted to see and have in the jury room the exhibits in this case. There is no objection.

Mr. Dwight: Particularly the pictures of the defendant's home.

The Court: The pictures of the defendant's home. There being no objection, the Court allows that request and also all the exhibits.

Mr. Dwight: That is all they want.

The Court: All right. Those exhibits will be sent up to the jury room for the edification of the jury.

(The exhibits were delivered to the jury by the bailiff.)

(At 12:10 o'clock p. m., the jury returned to the court-room and jury box. Thereupon the following proceedings were had):

The Clerk: Criminal 14332 Territory of Hawaii against Ilene Warren, alias "Speed" Warren.

The Court: Gentlemen of the Jury, have you reached a verdict? [581]

The Foreman: No, your Honor.

The Court: Well, the jury will go to lunch with the bailiff. You expressed a preference for the Young Hotel. Be back any time within an hour and a half or sooner; any time the jury desires to come back.

(At 12:15 o'clock p. m. the jury retired from the court-room in the custody of Bailiff Moses W. Kaulaau for luncheon at the Young Hotel and afterward returned to the jury room for further deliberation upon their verdict.

At 4:45 o'clock p. m., the bailiff reported to the Court the jury had a request to make. Both counsel being present in chambers, the clerk of court (Mrs. Sezenevsky) and the bailiff, the following proceedings were had):

The Court: Moke, for the record: You, Moke, the bailiff, you brought down Instruction No. 20, page 24, with a request, I understand, from the jury. What was that request?

(“Instruction No. 20—Defendant

“You are instructed that a mere preparation of the means of committing any offense, nothing being done in execution of the intent to commit the same, is not an attempt to commit the same, as for example merely procuring poison intended to be used for murder.”

24”)

The Bailiff: The request was they want you to explain it, what it really means, what way the Court should explain.

The Court: What that instruction means?

The Bailiff: Yes.

Mr. Dwight: That is all? [582]

The Bailiff: Yes.

Mr. Dwight: I object at this time to this Court at this time instructing the jury or offering an instruction to the jury on any other subject than that covered by the request, the request being that the Court explain “preparation”; that the approved instruction contains an instruction upon the law of attempt; which denies to the defendant the opportunity of arguing the instruction before the jury, the case having been submitted to the jury and the jury having deliberated upon their verdict and not having



requested any instruction upon "attempts." I also object to the proposed instruction upon the ground that it is misleading; that it does not elaborate upon Instruction No. 20; upon the further ground that it does not state the law of "preparation" as defined by our statute and further except to the giving of the instruction as prejudicial and as denying this defendant a fair trial under the Sixth Amendment of the Constitution of the United States. Now, that is all my formal objection.

Mr. Young: May I make a statement for the purpose of the record?

The Court: Mr. Young.

Mr. Young: If your Honor please, as I understand the request from the jury, the instruction they have requested to be explained contains the matter of "preparation". "Preparation" is no crime in the Territory of Hawaii. It must be read in connection with an "attempt". I have read the [583] instruction which the Court is going to offer and in my opinion this is a proper instruction, setting forth the law of "attempts" and that it is necessary in order for the jury to understand the procuring part of an attempt in preparation. The jury do not understand what an "attempt" is. It is very difficult, if not impossible, for them to understand what the preparation for an attempt is. Now, the Territory feels at this time that the instruction of "preparation" was erroneously given to the jury.

Mr. Dwight: May I except to this at this time? This is the law of the case. I submit counsel has no right to use that as the basis of any argument for the offering of this instruction.

Mr. Young: I am just stating my reason. You can take your exceptions later. The Territory feels that the giving of the instruction on "preparation" was not warranted as not being within the issues of this case; that at this time the Territory feels that there should be no further explanation of such an instruction because it was not proper to give it to them in the first place, but if the Court desires to give them a further instruction, the Territory feels that it is the proper instruction to be given.

Mr. Dwight: May I except to the Prosecutor's remarks as contemptuous, as improper, as illegal, as being offered solely for the purpose of prejudicing the Court in the consideration of this instruction before proper argument has been made thereon by counsel for the defendant— [584]

Mr. Young: May the record show—

Mr. Dwight: Just a moment. (Continuing) and I assign counsel's remarks as error and as misconduct on the part of the Public Prosecutor and I ask that a mistrial at this time be entered before we argue.

Mr. Young: May the record show that my statement to your Honor was made in all good faith, with all due respect to this Honorable Court? The Territory was merely trying to explain its position

in the matter of the instruction that is to go to the jury at this time.

Mr. Dwight: I submit we can send for the bailiff. I want to point out further my objection so that the record will be clear, that is, the formal grounds of the objection. (Reading) "In answer to that request," that is, the request on "preparation", (Reading) "you are further instructed that if a person had the intent to commit a crime with another person and had done everything required and necessary for the preparation for the actual commission thereof", I submit that that language is not definite enough for this reason, that we are dealing with the crime of sexual intercourse. We are dealing with the crime of living in and about a house of ill-fame. There are the two crimes, the evidence discloses, may or may not have been committed by Miss Penland under the evidence. The expression "had done everything required" may mean everything, including the act of sexual intercourse, and then the expression "and was ready, willing and [585] able to commit that crime" therefore makes the instruction misleading; in other words, the person had done everything required to commit the crime means the commission of the crime; that is what it means in so many words, "and was ready, willing and able to commit that crime". Our statute specifically says if a crime has been committed, "attempt" is merged into the commission of the crime. I also object to the next clause.

The Court: I have a modification on your objection to read in connection with your objection, "had done everything required and necessary for the actual commission thereof". I have modified it, "had done everything required and necessary for the preparation for the actual commission thereof."

Mr. Young: Put in the word "preparation".

The Court: "For the preparation". Have you any other objection?

Mr. Dwight: Yes, the next one, (Reading) "then he is guilty of an attempt to commit that crime". Now, this is the furious part of this instruction, "regardless of whether or not the person with whom he intended to commit the crime had an intent to also commit the crime," as being a violation of the case of *Territory v. Hondo*, which is cited in the case of *Territory v. Bodine*, and I want to refer to the case of *Territory v. Bodine* in a little while; and the next clause (Reading) "The mere fact that the other person withdrew and thereby prevented the commission of the crime does not preclude and prevent the crime [586] of attempt," as misleading, as misstating the law, as not an instruction upon the law—I mean an instruction of law upon the facts as shown in this case. The facts in this case conclusively show without any dissent and by witnesses for the prosecution, which testimony binds the government, that there was no intention whatsoever to commit the crime of sexual intercourse and further that there was no withdrawal and further that the evidence conclusively shows in

this case, without any evidence contradicting it, that there was no withdrawal so as to prevent the culmination of the commission of the crime and for that reason that portion of the instruction is not within the issues of the case. I further object to the illustrations contained in the second paragraph, first, that a man may make an attempt, an effort, a trial to steal by breaking open a trunk and be disappointed in not finding the object of pursuit and so not steal in fact, as being an example of an "attempt" and not an example of "preparation", as requested by the jury in this case. Upon the further ground that the defendant has been deprived of his opportunity to argue to the jury upon the example of "attempt" set forth in this paragraph. (Argument.) In view of the objection of both counsel, I think that is sufficient ground to send this back.

The Court: I am going to send this back with this statement, to consider that and all the other instructions of this Court. [587]

(A brief recess was taken. At 4:45 o'clock p. m., both counsel, as well as Mr. William Z. Fairbanks, Assistant Public Prosecutor, being present in chambers, the clerk of court and the bailiff, the following proceedings were had):

Mr. Young: I want the record to show that after reading the authorities, the Territory believes it is now the proper procedure for the Court to give an instruction along the line proposed.

Mr. Dwight: I want an opportunity to look up the law. Counsel rushed in one moment ago. It is unconstitutional; it deprives the defendant of a fair trial by jury. I submit the Court can't give this instruction to the jury.

The Court: The Court will give this instruction.

Mr. Dwight: May I suggest that the bailiff ask the jurors if they want further instruction on that; that you send back the instruction. They have not asked for further instruction on it.

The Court: The Court takes that suggestion and tells the bailiff to ask them if they want more instruction in reference to Instruction No. 20 on page 24. If they do, give that instruction to them. If they do, I will give it in open Court.

(The Court handed Instruction No. 20 to the bailiff and the bailiff complied with the order of the Court.)

Mr. Fairbanks: Then that will save the record.

Mr. Dwight: I forgot that Mr. Fairbanks was [588] a Deputy Public Prosecutor, as well as an officer of the Court. I want the record to show that.

(The bailiff returned to the Court in chambers and reported as follows):

The Bailiff: They want to come down and let the Court instruct them.

(A brief recess was taken. At 5:53 o'clock p. m., the jury returned to the court-room and

jury box, and the following proceedings were had):

The Court: Gentlemen of the jury, I understand you have made a request of the Court. What is it, on this Instruction No. 20 on page 24, on the bottom of page 24?

The Foreman: Yes, Your Honor. We would like to get some explanation on it.

The Court: You wish further instruction on that?

The Foreman: Yes.

Mr. Dwight: If the Court please, will the Court inquire of the Foreman of the jury whether they want an explanation of that particular instruction?

The Court: Just what do you want?

The Foreman: Just this phrase here, Your Honor, (Reading) "nothing being done in execution of the intent to commit the same."

(The reporter read the foregoing statement of the foreman of the jury.)

Mr. Dwight: I take it, your Honor, what the jury desires is an instruction on the last clause, the words "nothing being done in execution of the intent to commit the same." [589]

The Court: The Court is ready to instruct the jury.

Mr. Dwight: May I suggest, in view of the request of the jury, at this time the jury be permitted to take their dinner and counsel to take up the

matter during the dinner hour, the request being concerning that last clause.

Mr. Young: Your Honor, if I may make a suggestion, I believe the instruction which Your Honor has prepared is applicable to the request of the jury.

The Court: Do I understand, Mr. Foreman, that that is the only part of that instruction that you wish an illustration on?

The Foreman: Yes, sir.

The Court: You understand all the other part except that.

The Foreman: Just that one part; yes, sir.

The Court: The Court will take this request of just one phrase out of the instructions under advisement to instruct the jury just on those words, "nothing being done in execution of the intent to commit the same". The Court is ready to instruct at this time, that being the subject matter, explaining the phrase, "nothing being done in execution of the intent to commit the same." It is a phrase modifying the phrase "a mere preparation of the means of committing any offense", which is the subject matter of the sentence. The Court is ready to instruct the jury. (Reading)

Gentlemen of the Jury: You have requested this [590] Court for further instructions in respect to my instruction already given numbered Instruction No. 20, on page 24.

In answer to that request you are further instructed that if a person had the intent to commit



a crime with another person and had done everything required and necessary for the preparation for the actual commission thereof and was ready, willing and able to commit that crime, then he is guilty of an attempt to commit that crime, regardless of whether or not the person with whom he intended to commit the crime had an intent to also commit the crime. The mere fact that the other person withdrew and thereby prevented the commission of the crime does not preclude and prevent the crime of attempt.

In this connection I instruct you that Section 5310 R. L. of Hawaii, 1935 provides as follows:

“Attempt. An attempt to commit an offense is some act done towards committing and in part execution of the intent to commit the same. As for example, putting poison in the way of a person, with intent thereby to murder him.”

This instruction will be handed to the jury as part of the instructions of the Court as Instruction No. 44.

Mr. Dwight: May it please the Court, may the defendant except to the giving of the instruction upon the ground that the instruction given by the Court is not in response to any request made by the jury, in that the jury did request an explanation of the words mentioned by the Foreman of the jury; upon the ground that the instruction does contain facts upon which this defendant has no op-

portunity to argue to the jury and therefore denies the de- [591] fendant the opportunity of a fair trial by jury under the Sixth Amendment; upon the further ground that the instruction does not state the law of preparation as set forth in the instruction granted by this Court to the jury in Instruction No. 20. May my exception be noted, your Honor?

The Court: It may be noted.

Mr. Dwight: May the jury be excused at this time so that I may go home?

The Court: The jury will be excused for the purpose of lunch, recreation and rest, I believe, three hours. The Court is going to give you—Have you any request?

The Foreman: There is a request by the jury to go upstairs for another ten or fifteen minutes.

The Court: Proceed up to the jury room for another ten or fifteen minutes.

(The jury retired at 6:02 o'clock p. m., and afterward returned into court, whereupon the following proceedings were had:)

### THE VERDICT

The Court: Gentlemen of the Jury, have you reached a verdict?

The Foreman: Yes, Your Honor.

The Court: Hand it to the Clerk.

(The Foreman handed the verdict to the Clerk (Mr. Wilder), which was read by him, as follows:)

“In the Circuit Court of the First Circuit  
Territory of Hawaii

January Term, A. D. 1938 [592]

Honorable Louis LeBaron, First Judge,  
Presiding:

Criminal No. 14332

THE TERRITORY OF HAWAII

v.

ILENE WARREN alias

“SPEED” WARREN,

Defendant.

VERDICT

We the Jury, in the above entitled cause,  
find the defendant Guilty of Manslaughter,  
Leniency Recommended.

(Signed) PATRICK JOHN O’SULLIVAN  
Foreman.

February 18, 1938.”

Mr. Dwight: At this time, may it please the  
Court, may I except upon the ground it is con-  
trary to law, the evidence, the weight of the evi-  
dence, and hereby give notice of a motion for a  
new trial.

The Court: Let the record so show.

Mr. Dwight: The matter of sentence, does the  
Court wish to pass upon that?

The Court: I will poll the jury.

(The court asked each juror in turn whether the verdict finding the defendant guilty of manslaughter, leniency recommended, was his verdict, and each juror answered in the affirmative.)

The Court: The Court orders this verdict filed and finds and adjudges the defendant guilty of manslaughter.

Mr. Dwight: May I except to the verdict at this time——

The Court: You may except.

Mr. Dwight: (Continuing) and the judgment of the [593] Court.

Mr. Young: The matter of sentence, next Friday?

Mr. Dwight: One week from today?

Mr. Young: Yes, Your Honor.

The Court: The matter of sentence is continued for one week from today. The jury are excused. The Court adjourns.

(The Court adjourned at 6:20 o'clock p. m.)

[594]

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Honolulu, T. H., April 14, 1938.

(At 2:00 o'clock p. m., the defendant was brought before the Court for sentence. Both counsel being present, and the clerk of court, the following proceedings were had:)

#### TRANSCRIPT OF PROCEEDINGS AT IMPOSITION OF SENTENCE

The Clerk (Mr. Wilder): Criminal 14,332 Territory of Hawaii versus Ilene Warren alias

“Speed” Warren, for sentence.

The Court: This comes before the Court in the matter of sentence at this time. The jury having found the defendant guilty of manslaughter with the recommendation of leniency, and the Court having overruled the defendant’s motion for a new trial, the Court is now ready to impose sentence. Ilene Warren, have you anything to say why sentence should not now be passed upon you?

The Defendant: No.

Mr. Dwight: May it please the Court, we are ready for sentence, but I would like to make a statement on behalf of the defendant.

The Court: Sure.

Mr. Dwight: May it please the Court, this was an unusual case. We submit to the verdict of the jury. The jury found her guilty of manslaughter with the recommendation of leniency. The Court instructed the jury on the law. The Court instructed the jury that she had the right to take life in the protection of her home. The jury, however, feel the means [595] she used was unreasonable, perhaps one of the reasons—nobody knows—and found her guilty of manslaughter and recommended leniency. I don’t know what the expression “leniency” means, whether the Court will take that into consideration, but I do know the Court will take into consideration that, as a matter of law, she had a right to protect her home against any illegal entry. She had a right in the protection of her home to take life, if the means were reasonable. And also, may it please the Court, her

record, although the police did testify, there is absolutely no conviction against her. She has no former criminal record and I submit, may it please the Court, in view of her standing in the community, the fact that she is not a man, due to the fact she did what any other human being would have done, sought an electrician to install the apparatus, which apparatus was not a dangerous implement, due to the fact that five or six people had come into contact with the same, after all it would be for the public good that this Court suspend sentence and put her on probation.

The Court: Mr. Young, have you any recommendation, anything to say in that regard?

Mr. Young: Pardon me just a moment, Your Honor. (Mr. Young conferred with Mr. Charles E. Cassidy, Public Prosecutor.) If Your Honor please, after quite a lengthy trial I am quite sure that Your Honor is well acquainted with the facts in this case as presented by the prosecution. We do not feel that the facts in this case warrant placing [596] this defendant upon probation.

The Court: The Court will impose sentence. The jury recommended leniency in imposing sentence. The Court informs the defendant that the question of leniency will be taken up in reference to the minimum subsequently. Consequently, it is the sentence and judgment of this Court that you, Ilene Warren, be confined for the period of Ten Years at hard labor in Oahu Penitentiary, costs remitted. The Court states again that the minimum

sentence will be set later and subsequently according to law, at which time it will also consider the question of leniency with reference to the minimum sentence.

Mr. Dwight: May it please the Court, may the mittimus be stayed?

The Court: It may.

Mr. Dwight: May the defendant save an exception to the sentence on the ground it is contrary to law and also upon the same grounds set forth in the motion for a new trial, which are specifically made a part of the record and may mittimus be stayed until the suing out of a writ of error.

The Court: Mittimus stayed until the perfection of the appeal.

Mr. Young: If the Court please, may the mittimus be stayed for a definite period?

The Court: Thirty days; so ordered. Mittimus is stayed for thirty days. [597]

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### CERTIFICATE OF REPORTER

I Hereby Certify that the foregoing, consisting of Volume I, Part I, pages number 1 to 285, inclusive, and Volume I, Part II, pages number 286 to 598, inclusive, to be a full, true and correct transcript of my shorthand notes in the above-entitled matter.

Dated: Honolulu, T. H., May 27, 1938.

GEORGE R. CLARK

Official Shorthand Reporter  
Circuit Court, 1st Circuit  
Territory of Hawaii.

[Endorsed]: Filed Aug. 1, 1938. [598]

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[Endorsed]: No. 9506. United States Circuit Court of Appeals for the Ninth Circuit. Ilene Warren alias Speed Warren, Appellant, vs. The Territory of Hawaii, Appellee. Transcript of Record. Upon Appeal from the Supreme Court of the Territory of Hawaii.

Filed April 24, 1940.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



In the United States Circuit Court of Appeals for  
the Ninth Circuit

Case No. 9506

ILENE WARREN, etc.,

vs.

TERRITORY OF HAWAII.

STATEMENT OF POINTS UPON WHICH  
DEFENDANT PLAINTIFF-IN-ERROR IN-  
TENDS TO RELY

Now comes Ilene Warren alias "Speed" Warren, Defendant, Plaintiff-in-Error, above named, and presents the following Statement of Points upon which she intends to rely on the appeal and the designation of the parts of the Record considered material for the disposition thereof.

I.

That the Supreme Court of the Territory of Hawaii erred in sustaining the rulings of the Circuit Court of the First Judicial Circuit over the objection and exception of Defendant, Plaintiff-in-Error:

(a) in admitting the testimony of Edward J. Burns, a witness for the Territory of Hawaii, concerning his observations in the home of the Defendant;

(b) the testimony of Lou Rodgers, a witness for the Territory of Hawaii, concerning the electrical equipment and the installation thereof in the home of the Defendant;

(c) the testimony of John Kiehm, a witness for the Territory of Hawaii, concerning the electrical apparatus in the home of the Defendant and the installation thereof; and

(d) the testimony of Florence Billie Penland, a witness for the Territory of Hawaii, to the effect that the Defendant told her she pulled the switch.

The said evidence being incompetent, irrelevant and immaterial in that it was procured and adduced in violation of the Defendant's rights under the Constitution of the United States and the Fourth and Fifth Amendments thereof.

The Defendant, Plaintiff-in-Error designates the testimony of the witness, Edward J. Burns, contained on pages 200 to 270 of the Transcript of the Evidence, the testimony of Lou Rogers appearing on pages 37 to 123 of the Transcript of the Evidence, the testimony of John Kiehm appearing on pages 123 to 154 of the Transcript of the Evidence as necessary for the consideration of the foregoing points.

## II.

That the Supreme Court of the Territory of Hawaii erred in sustaining the rulings of the Circuit Court of the First Judicial Circuit in giving to the jury, over the objection and exception of Defendant, Territory's Requested Instructions Nos. 12, 12-A and 14 and in refusing to give Defendant's Requested Instructions Nos. 16 and 18, upon the grounds that said Instructions 12, 12-A and 14 were based upon Section 5405 of the Revised Laws of

Hawaii, 1935, which section is unconstitutional and void in that it controvenes Article Four of the Amendments to the Constitution of the United States, in that said statute and said instructions make no distinction between arrests in cases of misdemeanors and arrests in cases of felonies and that under said instruction the jury was instructed that an arrest may be made in the case of a misdemeanor in cases where the crime was committed without the presence of the arresting officer and therefore violative of the Defendant's rights under the Constitution of the United States.

That Instructions Nos. 16 and 18 were consistent with the Constitution of the United States and the Fourth Amendment thereof and that the refusal to give said Instructions was violative of the Defendant's rights under the Fourth Amendment to the Constitution of the United States.

The Defendant, Plaintiff-In-Error, designates Prosecution's Requested Instruction 12, appearing on page 88-89 of the Record, Prosecution's Requested Instruction 12-A, appearing on pages 90-91 of the Record and Prosecution's Requested Instruction No. 14, appearing on page 92 of the Record, Defendant's Requested Instruction No. 16, appearing on page 93 of the Record, Defendant's Requested Instruction No. 18, appearing on page 94 of the Record, the Court's charge to the jury, appearing on pages 549-564 of the Transcript of the Evidence, Record pages 589 to 607, and the Tran-

script of the Evidence taken at the trial, as necessary for the consideration thereof.

Dated at Honolulu, Hawaii, this 3 day of June A. D. 1940.

ILENE WARREN, alias  
"SPEED" WARREN,  
Defendant, Plaintiff-in-Error,  
By CHARLES B. DWIGHT  
Her Attorney.

Receipt of a copy of the within acknowledged this 4 day of June 1940.

KENNETH E. YOUNG,  
Atty. For Ter. of Hawaii

[Endorsed]: Filed Jun 6 1940 Paul P. O'Brien,  
Clerk.